

UNITED STATES DISTRICT COURT

FILED  
U.S. DISTRICT COURT

NORTHERN DIVISION

District of

UTAH

UNITED STATES OF AMERICA

V.

CATARINO STANSBURY MARTINEZ

JUDGMENT IN A CRIMINAL CASE

(For Revocation of Probation or Supervised Release)

BY:

DEPUTY CLERK

Case Number: DUTX103CR000061-001

USM Number: 10635-081

Audrey James

Defendant's Attorney

THE DEFENDANT:

☒ admitted guilt to violation of condition(s) 2 of the Petition of the term of supervision.

☐ was found in violation of condition(s) \_\_\_\_\_ after denial of guilt.

The defendant is adjudicated guilty of these violations:

<u>Violation Number</u>	<u>Nature of Violation</u>	<u>Violation Ended</u>
2	Defendant associated with known gang members	11/20/2008

The defendant is sentenced as provided in pages 2 through 4 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

☒ The defendant has not violated condition(s) 1 of the Petition and is discharged as to such violation(s) condition.

It is ordered that the defendant must notify the United States attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid. If ordered to pay restitution, the defendant must notify the court and United States attorney of material changes in economic circumstances.

Defendant's Soc. Sec. No.: 000-00-7892

Defendant's Date of Birth: '1980

Defendant's Residence Address:

1/13/2009

Date of Imposition of Judgment

Signature of Judge

The Honorable Ted Stewart

Name of Judge

U. S. District Judge

Title of Judge

1/13/2009

Date

Defendant's Mailing Address:

DEFENDANT: CATARINO STANSBURY MARTINEZ  
CASE NUMBER: DUTX103CR000061-001

## IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a total term of :

Time-Served

- ☐ The court makes the following recommendations to the Bureau of Prisons:
- ☐ The defendant is remanded to the custody of the United States Marshal.
- ☐ The defendant shall surrender to the United States Marshal for this district:
- ☐ at \_\_\_\_\_ ☐ a.m. ☐ p.m. on \_\_\_\_\_
- ☐ as notified by the United States Marshal.
- ☐ The defendant shall surrender for service of sentence at the institution designated by the Bureau of Prisons:
- ☐ before 2 p.m. on \_\_\_\_\_
- ☐ as notified by the United States Marshal.
- ☐ as notified by the Probation or Pretrial Services Office.

## RETURN

I have executed this judgment as follows:

Defendant delivered on \_\_\_\_\_ to \_\_\_\_\_  
at \_\_\_\_\_ with a certified copy of this judgment.

\_\_\_\_\_  
UNITED STATES MARSHAL

By \_\_\_\_\_  
DEPUTY UNITED STATES MARSHAL

DEFENDANT: CATARINO STANSBURY MARTINEZ

CASE NUMBER: DUTX103CR000061-001

### SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be on supervised release for a term of :  
12 months

The defendant must report to the probation office in the district to which the defendant is released within 72 hours of release from the custody of the Bureau of Prisons.

The defendant shall not commit another federal, state or local crime.

The defendant shall not unlawfully possess a controlled substance. The defendant shall refrain from any unlawful use of a controlled substance. The defendant shall submit to one drug test within 15 days of release from imprisonment and at least two periodic drug tests thereafter as determined by the court.

- ☐ The above drug testing condition is suspended, based on the court's determination that the defendant poses a low risk of future substance abuse. (Check, if applicable.)
- ☒ The defendant shall not possess a firearm, ammunition, destructive device, or any other dangerous weapon. (Check, if applicable.)
- ☒ The defendant shall cooperate in the collection of DNA as directed by the probation officer. (Check, if applicable.)
- ☐ The defendant shall register with the state sex offender registration agency in the state where the defendant resides, works, or is a student, as directed by the probation officer. (Check, if applicable.)
- ☐ The defendant shall participate in an approved program for domestic violence. (Check, if applicable.)

If this judgment imposes a fine or restitution, it is a condition of supervised release that the defendant pay in accordance with the Schedule of Payments sheet of this judgment.

The defendant must comply with the standard conditions that have been adopted by this court as well as with any additional conditions on the attached page.

### STANDARD CONDITIONS OF SUPERVISION

- 1) the defendant shall not leave the judicial district without the permission of the court or probation officer;
- 2) the defendant shall report to the probation officer and shall submit a truthful and complete written report within the first five days of each month;
- 3) the defendant shall answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer;
- 4) the defendant shall support his or her dependents and meet other family responsibilities;
- 5) the defendant shall work regularly at a lawful occupation, unless excused by the probation officer for schooling, training, or other acceptable reasons;
- 6) the defendant shall notify the probation officer at least ten days prior to any change in residence or employment;
- 7) the defendant shall refrain from excessive use of alcohol and shall not purchase, possess, use, distribute, or administer any controlled substance or any paraphernalia related to any controlled substances, except as prescribed by a physician;
- 8) the defendant shall not frequent places where controlled substances are illegally sold, used, distributed, or administered;
- 9) the defendant shall not associate with any persons engaged in criminal activity and shall not associate with any person convicted of a felony, unless granted permission to do so by the probation officer;
- 10) the defendant shall permit a probation officer to visit him or her at any time at home or elsewhere and shall permit confiscation of any contraband observed in plain view of the probation officer;
- 11) the defendant shall notify the probation officer within seventy-two hours of being arrested or questioned by a law enforcement officer;
- 12) the defendant shall not enter into any agreement to act as an informer or a special agent of a law enforcement agency without the permission of the court; and
- 13) as directed by the probation officer, the defendant shall notify third parties of risks that may be occasioned by the defendant's criminal record or personal history or characteristics and shall permit the probation officer to make such notifications and to confirm the defendant's compliance with such notification requirement.

DEFENDANT: CATARINO STANSBURY MARTINEZ  
CASE NUMBER: DUTX103CR000061-001

### **SPECIAL CONDITIONS OF SUPERVISION**

All prior terms and conditions are reinstated, with the addition of the following:

- 1) The defendant shall participate in a location monitoring program for a period of 180 days, which may include electronic or non-electronic means, i.e., global positioning satellite tracking (GPS), radio frequency, voice verification tracking, or other services as determined by the probation office. The defendant is restricted to his residence at all times, except for activities pre-approved by the probation office. The defendant shall pay all the costs of the program.
- 2) The defendant shall submit his person, residence, office, or vehicle to a search, conducted by the probation office at a reasonable time and in a reasonable manner, based upon reasonable suspicion of contraband or evidence of a violation of a condition of release; failure to submit to a search may be grounds for revocation; the defendant shall warn any other residents that the premises may be subject to searches pursuant to this condition.
- 3) The defendant shall not have any contact with any member or associate of a criminal street gang/security threat group either in person, by mail, by phone, by e-mail, by third person, or by any other method.
- 4) The defendant shall not wear clothing or other items that may be identified with a criminal street gang/security threat group.
- 5) The defendant shall not possess material which gives evidence of criminal street gang/security threat group involvement or activity.
- 6) The defendant will submit to drug/alcohol testing as directed by USPO.
- 7) The defendant shall maintain full time verifiable employment or participate in academic or vocational training as deemed appropriate by USPO.

FILED  
U.S. DISTRICT COURT

2009 JAN 14 A 10:38

DISTRICT OF UTAH

BY: DEPUTY CLERK

IN THE UNITED STATES DISTRICT COURT  
DISTRICT OF UTAH, NORTHERN DIVISION

UNITED STATES OF AMERICA,

CASE NO: 1:06 CR 098 DB

Plaintiff,

ORDER

vs.

STELLA SMITH,

Defendant.

Based on the joint motion to continue sentencing submitted by the parties and good cause appearing, the Court continues the sentencing hearing scheduled for December 16, 2008, at 2:30 p.m. for defendant Stella Smith, and re-schedules the matter to the 19 day of FEBRUARY 2009 at 3:00 a.m. (p.m.)

IT IS SO ORDERED.

DATED this 14 day of JANUARY 2009, 2008.

BY THE COURT:

Dee Benson  
DEE BENSON  
United States District Judge

THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH

NORTHERN DIVISION

\* \* \* \* \*

UNITED STATES OF AMERICA, ) Case No. 1:07CR00078 DS

Plaintiff, )

vs. )

JOHN McCALLISTER HOOD, ) MEMORANDUM DECISION  
AND ORDER

Defendant. )

\* \* \* \* \*

**I. INTRODUCTION**

Defendant filed a Motion to Dismiss for Destruction of Evidence (Doc. #44). An evidentiary hearing was held on November 12, 2008. The parties have submitted post hearing memoranda and the matter is ripe for decision.

Briefly stated, the relevant facts are these. On September 14, 2006, Stacy Wilbert ("Wilbert") was found in possession of methamphetamine. She told officers that Defendant was her dealer and that she was willing to call him and request a delivery of methamphetamine to her residence. Defendant subsequently appeared at Wilbert's residence with a backpack, a search of which revealed 5 plastic bags which field tested positive for methamphetamine. The 5 bags were placed in evidence at the Ogden City Police Department. On October 5, 2006, Officer Brandon Beck went to the evidence room and emptied the five plastic bags into another bag so

that the five original bags could be transferred and processed for fingerprints. Those five bags have since been destroyed. The bag in which Officer Beck had placed the Methamphetamine was delivered to the crime laboratory for analysis. On May 22, 2007, Officer Chad Ferrin obtained the methamphetamine and used it for K-9 training. On May 19, 2008, another officer returned the methamphetamine to the Ogden Police Department evidence room.

## **II. DISCUSSION**

The destruction of evidence by the government prior to trial violates a defendant's due process rights when (1) the government destroys evidence whose exculpatory value was apparent before it was destroyed, and (2) the evidence is of such a nature that the defendant would be unable to obtain comparable evidence by any other reasonably available means. *California v. Trombetta*, 467 U.S. 479, 489 (1984). If the exculpatory value of the evidence is not apparent and all the defendant can show is that it would be "potentially useful" for the defense, then the Defendant must show that the government acted in bad faith in destroying the evidence. *Arizona v. Youngblood*, 488 U.S. 51, 58 (1988).

Defendant asserts that the *Trombetta* test was violated because "[t]he original bags of material obtained were combined, the bags it had been in were destroyed, the tape recordings were all erased, and the remaining combined material was turned over to another law

enforcement for K-9 training", destroying the chain of custody. Mem. Supp. pp. 5-6.

The Court is not persuaded that the *Trombetta* test has been met. Defendant fails to establish what the apparent exculpatory value of the destroyed evidence is or that the destroyed evidence would exculpate him. Field tests and Crime lab reports establish the presence of methamphetamine and witness testimony establishes Defendant's possession. Defendant is free to use any alleged government missteps for impeachment purposes at trial.

At most, Defendant's position amounts to an argument that the destroyed evidence would be potentially useful.<sup>1</sup> However, the Court finds that Defendant has not presented any evidence of bad faith and, therefore, has failed to meet his burden of establishing that the government acted in bad faith as required under *Yondblood*.

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<sup>1</sup>Defendant urges:

First, by combining all the material into one bag before testing it, the defense cannot actually now measure the quantity of pure methamphetamine originally seized from Mr. Hood, if any. By destroying the baggies the material was in, the defense cannot test them for methamphetamine residue. Breaking the chain of evidence with regard to the material prevents the defense from knowing whether what is now in evidence with regard to the material prevents the defense from knowing whether what is now in evidence is what was removed from evidence.

Mem. Supp. P.6

### III. CONCLUSION

For the forgoing reasons, as well as those set forth by the United States in its pleadings, Defendant John McCallister Hood's Motion to Dismiss (Doc. #44) is DENIED. IT IS SO ORDERED.

DATED this 13 day of January, 2009.

BY THE COURT:

A handwritten signature in black ink, appearing to read "David Sam", is written over a horizontal line.

DAVID SAM  
SENIOR JUDGE  
UNITED STATES DISTRICT COURT

**United States District Court  
for the District of Utah**

**Criminal Pretrial Instructions**

The prosecution has an open file policy.

Issues as to witnesses do not exist in this matter, but defense counsel will make arrangements for subpoenas, if necessary, as early as possible to allow timely service.

Counsel must have all exhibits premarked by the clerk for the district judge before trial.

If negotiations are not completed for a plea by the plea deadline, the case will be tried.

In cases assigned to Judge Cassell, counsel are directed to meet and confer about the possibility of a plea, and before the deadline report to chambers whether the matter will proceed to trial.

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IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH  
CENTRAL DIVISION

---

LYNN K. MAURER,

Plaintiff,

vs.

MICHAEL J. ASTRUE, in his capacity as  
Commissioner for the Social Security  
Administration,

Defendant.

ORDER OF REFERENCE

Civil No. 2:08-CR-128 TS


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Pursuant to the consent of the parties contained in the Joint Statement of the Parties  
(Docket No. 10), it is therefore

ORDERED that, as authorized by 28 U.S.C. § 636(c), Fed. R. Civ. P. 73(b) and the rules  
of this Court, the above entitled case is referred to Magistrate Judge Samuel Alba to conduct all  
proceedings in the case, including entry of final judgment, with appeal to the United States Court  
of Appeals for the Tenth Circuit.

DATED this 13th day of January, 2009.

BY THE COURT:

  
TED STEWART  
United States District Judge

United States Probation Office  
for the District of Utah

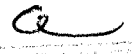
**Report on Offender Under Supervision**

FILED  
U.S. DISTRICT COURT

Name of Offender: **Kent L. Coulson**

Docket Number: **2:01-CR-00583-001**

Name of Sentencing Judicial Officer: **Honorable David Sam**  
**Senior United States District Judge**

2009 JAN 14 A 11:28  
DISTRICT OF UTAH  
BY:   
DEPUTY CLERK

Date of Original Sentence: **August 7, 2002**

Original Offense: **Possession With Intent to Distribute a Controlled Substance (Meth)**

Original Sentence: **70 months BOP; 48 months TSR**

Type of Supervision: **Supervised Release** Supervision Began: **August 14, 2006**

**SUPERVISION SUMMARY**

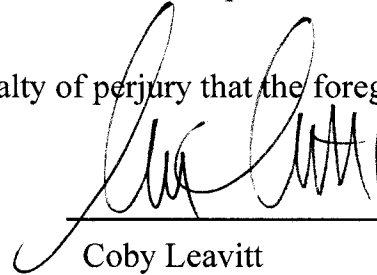
The purpose of this supervision summary is to request permission for the defendant to leave the country on a pleasure cruise. The defendant has requested traveling from San Diego, California to Cabo San Lucas, Mexico from February 2, 2009 to February 7, 2009, for a vacation/honeymoon. Traveling with the defendant will be his wife, Rachel Coulson. The couple were married in July 2008.

While on supervision, the defendant has been cooperative with the probation office. There have been no violations of supervised release, and all random UAs have been negative. The defendant has maintained employment, and has recently purchased a home with his wife.

Based on the above, the probation office is supportive of the defendant's request.

If the Court desires more information or another course of action, please contact me at (435) 634-0660 ext. 25.

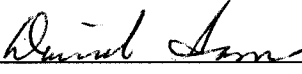
I declare under penalty of perjury that the foregoing is true and correct.



Coby Leavitt  
United States Probation Officer  
Date: January 5, 2009

THE COURT:

- ☒ Approves the request noted above  
☐ Denies the request noted above  
☐ Other

  
\_\_\_\_\_  
Honorable David Sam  
United States District Judge

Date: 1/13/89

FILED  
U.S. DISTRICT COURT

2009 JAN 14 A 11:29

DISTRICT OF UTAH

BY: *ce*  
CLERK OF COURT

**In the United States District Court  
for the District of Utah, Central Division**

UNITED STATES OF AMERICA,

Plaintiff,

vs.

BARRY LEONARD BINGHAM,

Defendant.

ORDER TERMINATING  
SUPERVISED RELEASE

Case No. 2:03-Cr-376

Based upon representations made by the Defendant, his history, and good cause appearing,

It is hereby ORDERED that Defendant's term of supervised release shall terminate as of January 19, 2009.

DATED this 13th day of January, 2009

BY THE COURT:

*J. Thomas Greene*  
J. THOMAS GREENE  
UNITED STATES DISTRICT JUDGE

**United States Probation Office  
for the District of Utah**

JAN 10 2009

D. MARK JONES, CLERK  
BY \_\_\_\_\_  
DEPUTY CLERK

**Report on Offender Under Supervision**

Name of Offender: **Troy A. Vega**

Docket Number: **2:04-CR-00251-003**

Name of Sentencing Judicial Officer: **Honorable Dale A. Kimball  
United States District Judge**

Date of Original Sentence: **October 12, 2006**

Original Offense: **Distribution of a Controlled Substance**

Original Sentence: **Credit for time served; 36 months supervised release**

Type of Supervision: **Supervised Release** Supervision Began: **October 12, 2006**

**SUPERVISION SUMMARY**

The objective of this report is to memorialize our conversation of January 6, 2009, and to recommend immediate termination of the defendant's supervised release.

The defendant was sentenced on October 13, 2006, for the offense of Attempted Possession of Methamphetamine (21 U.S.C. § 844), a Class A Misdemeanor. The maximum term of supervised release that could have been imposed for a Class A Misdemeanor is one year. However, in this case, the defendant was sentenced to a three-year term of supervised release to follow his term of imprisonment which was time served (see attached copy of Judgment and Commitment Order).

The defendant's current situation is as follows: the defendant is being supervised in the District of Mississippi and in July 2008, he was arrested for Driving Under the Influence of Alcohol. Based on the defendant's cooperation, Mississippi recommended no action with alcohol counseling imposed. Your Honor concurred with that recommendation. Subsequently, Mr. Vega was arrested in November 2008, for Driving Under the Influence of Alcohol. As this was the defendant's second arrest for DUI, a summons to appear before Your Honor was issued. In preparation for that hearing, it has come to light that the defendant appears to be serving an illegal term of supervised release.

Following a conversation with Your Honor, and at your direction, I am respectfully recommending that the defendant's term of supervised release be terminated effective immediately.

If the Court desires more information or another course of action, please contact me at (435) 634-0660 ext. 25 .

I declare under penalty of perjury that the foregoing is true and correct.

  
Coby Leavitt

United States Probation Officer

Date: January 8, 2009

THE COURT:

- ☒ Approves the request noted above  
☐ Denies the request noted above  
☐ Other

  
Honorable Dale A. Kimball

United States District Judge

Date: January 12, 2009

JAN 12 2009

PROB 35

(Rev. 7/97)

D. MARK JONES, CLERK  
BY \_\_\_\_\_  
DEPUTY CLERK

**Report and Order Terminating  
Prior to Original Expiration Date**

**UNITED STATES DISTRICT COURT**

**for the**

**DISTRICT OF UTAH**

UNITED STATES OF AMERICA

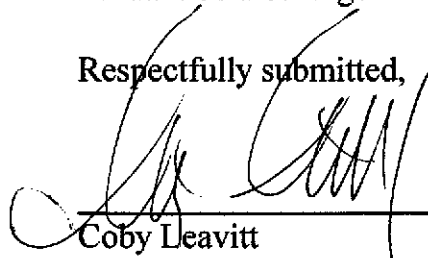
v. Criminal No. 2:04-CR-00251-003

TROY ANTHONY VEGA

On October 12, 2006 the above named was placed on for a period of three years.

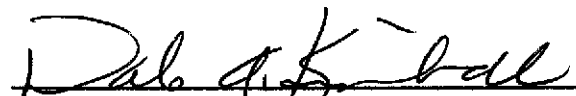
It is accordingly recommended that the defendant be discharged from supervision.

Respectfully submitted,

  
\_\_\_\_\_  
Coby Leavitt  
United States Probation Officer

Pursuant to the above report, it is ordered that the defendant be discharged from supervision and that the proceedings in the case be terminated.

Dated this 12<sup>th</sup> day of January, 2009.

  
\_\_\_\_\_  
Honorable Dale A. Kimball  
United States District Judge

UNITED STATES DISTRICT COURT

FILED  
U.S. DISTRICT COURT

Central

District of

UTAH

2009 JAN 14 A 9:54

UNITED STATES OF AMERICA

V.

Michael John Quick

JUDGMENT IN A CRIMINAL CASE

(For Revocation of Probation or Supervision or Release)

BY:

DEPUTY CLERK

Case Number: DUTX206CR00002-001

USM Number: 13192-081

Stephen R. McCaughey

Defendant's Attorney

THE DEFENDANT:

☒ admitted guilty to violation of condition(s) 1-6 of the term of supervision.

☐ was found in violation of condition(s) \_\_\_\_\_ after denial of guilt.

The defendant is adjudicated guilty of these violations:

<u>Violation Number</u>	<u>Nature of Violation</u>	<u>Violation Ended</u>
1.	Failed to Submit to Drug Testing	2/26/2008
2.	Failed to Notify his Change of Employment	
3.	Failed to Report to the Probation Office as Directed	2/22/2007
4.	Failed to Report to the Probation Office as Directed	2/25/2007

The defendant is sentenced as provided in pages 2 through 4 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

☐ The defendant has not violated condition(s) \_\_\_\_\_ and is discharged as to such violation(s) condition.

It is ordered that the defendant must notify the United States attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid. If ordered to pay restitution, the defendant must notify the court and United States attorney of material changes in economic circumstances.

Defendant's Soc. Sec. No.: \_\_\_\_\_

Defendant's Date of Birth: \_\_\_\_\_

Defendant's Residence Address: \_\_\_\_\_

1/13/2009

Date of Imposition of Judgment

Signature of Judge

Dee Benson

Name of Judge

U.S. District Judge

Title of Judge

1/14/2009

Date

Defendant's Mailing Address: \_\_\_\_\_

DEFENDANT: Michael John Quick  
CASE NUMBER: DUTX206CR00002-001

### ADDITIONAL VIOLATIONS

<u>Violation Number</u>	<u>Nature of Violation</u>	<u>Violation Concluded</u>
5.	Failed to Pay His Court Financial Obligations	2/28/2008
6.	Committed another State or Local Crime to wit: Attempted Possession/Use of a Controlled Substance, a Class A Misdemeanor.	1/26/2008

DEFENDANT: Michael John Quick  
CASE NUMBER: DUTX206CR00002-001

## IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a total term of :

6 months.

- ☐ The court makes the following recommendations to the Bureau of Prisons:
- ☒ The defendant is remanded to the custody of the United States Marshal.
- ☐ The defendant shall surrender to the United States Marshal for this district:
- ☐ at \_\_\_\_\_ ☐ a.m. ☐ p.m. on \_\_\_\_\_
- ☐ as notified by the United States Marshal.
- ☐ The defendant shall surrender for service of sentence at the institution designated by the Bureau of Prisons:
- ☐ before 2 p.m. on \_\_\_\_\_
- ☐ as notified by the United States Marshal.
- ☐ as notified by the Probation or Pretrial Services Office.

## RETURN

I have executed this judgment as follows:

Defendant delivered on \_\_\_\_\_ to \_\_\_\_\_  
at \_\_\_\_\_ with a certified copy of this judgment.

\_\_\_\_\_  
UNITED STATES MARSHAL

By \_\_\_\_\_  
DEPUTY UNITED STATES MARSHAL

DEFENDANT: Michael John Quick  
CASE NUMBER: DUTX206CR00002-001

### SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be on supervised release for a term of :  
No Supervised Release.

The defendant must report to the probation office in the district to which the defendant is released within 72 hours of release from the custody of the Bureau of Prisons.

The defendant shall not commit another federal, state or local crime.

The defendant shall not unlawfully possess a controlled substance. The defendant shall refrain from any unlawful use of a controlled substance. The defendant shall submit to one drug test within 15 days of release from imprisonment and at least two periodic drug tests thereafter as determined by the court.

- ☐ The above drug testing condition is suspended, based on the court's determination that the defendant poses a low risk of future substance abuse. (Check, if applicable.)
- ☒ The defendant shall not possess a firearm, ammunition, destructive device, or any other dangerous weapon. (Check, if applicable.)
- ☒ The defendant shall cooperate in the collection of DNA as directed by the probation officer. (Check, if applicable.)
- ☐ The defendant shall register with the state sex offender registration agency in the state where the defendant resides, works, or is a student, as directed by the probation officer. (Check, if applicable.)
- ☐ The defendant shall participate in an approved program for domestic violence. (Check, if applicable.)

If this judgment imposes a fine or restitution, it is be a condition of supervised release that the defendant pay in accordance with the Schedule of Payments sheet of this judgment.

The defendant must comply with the standard conditions that have been adopted by this court as well as with any additional conditions on the attached page.

### STANDARD CONDITIONS OF SUPERVISION

- 1) the defendant shall not leave the judicial district without the permission of the court or probation officer;
- 2) the defendant shall report to the probation officer and shall submit a truthful and complete written report within the first five days of each month;
- 3) the defendant shall answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer;
- 4) the defendant shall support his or her dependents and meet other family responsibilities;
- 5) the defendant shall work regularly at a lawful occupation, unless excused by the probation officer for schooling, training, or other acceptable reasons;
- 6) the defendant shall notify the probation officer at least ten days prior to any change in residence or employment;
- 7) the defendant shall refrain from excessive use of alcohol and shall not purchase, possess, use, distribute, or administer any controlled substance or any paraphernalia related to any controlled substances, except as prescribed by a physician;
- 8) the defendant shall not frequent places where controlled substances are illegally sold, used, distributed, or administered;
- 9) the defendant shall not associate with any persons engaged in criminal activity and shall not associate with any person convicted of a felony, unless granted permission to do so by the probation officer;
- 10) the defendant shall permit a probation officer to visit him or her at any time at home or elsewhere and shall permit confiscation of any contraband observed in plain view of the probation officer;
- 11) the defendant shall notify the probation officer within seventy-two hours of being arrested or questioned by a law enforcement officer;
- 12) the defendant shall not enter into any agreement to act as an informer or a special agent of a law enforcement agency without the permission of the court; and
- 13) as directed by the probation officer, the defendant shall notify third parties of risks that may be occasioned by the defendant's criminal record or personal history or characteristics and shall permit the probation officer to make such notifications and to confirm the defendant's compliance with such notification requirement.

James L. Barnett, #7462  
HOLLAND & HART LLP  
Attorneys for Defendants  
60 E. South Temple, Suite 2000  
Salt Lake City, Utah 84111-1031  
Telephone: (801) 799-5826  
Fax: (801) 799-5700  
E-mail: jlbarnett@hollandhart.com

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF UTAH, CENTRAL DIVISION

CHERYLYN KELLOGG (n.k.a. WORSLEY),  Plaintiff,  vs.  METROPOLITAN LIFE INSURANCE COMPANY and PFIZER ACCIDENTAL DEATH AND DISMEMBERMENT INSURANCE PLAN,  Defendants.	ORDER GRANTING STIPULATED MOTION TO EXTEND TIME TO RESPOND TO MOTION FOR AWARD OF PRE-JUDGMENT INTEREST AND FOR AWARD OF ATTORNEY FEES  2:06-CV-00610-DAK  Judge Dale A. Kimball
---	--

Based upon the Stipulated Motion for Extension of Time filed by the parties, and  
good cause appearing therefore,

IT IS HEREBY ORDERED that Defendants Metropolitan Life Insurance  
Company and Pfizer Accidental Death and Dismemberment Insurance Plan shall have  
until January 23, 2009 to respond to Plaintiff's Motion for Award of Pre-Judgment  
Interest and for Award of Attorney Fees.

DATED this 14<sup>th</sup> day of January, 2009.

BY THE COURT:



Handwritten signature of Dale A. Kimball in black ink, written over a light blue rectangular background. The signature is cursive and reads "Dale A. Kimball".

---

Judge Dale A. Kimball

4423357\_1.DOC

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**IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH**  
**CENTRAL DIVISION**

---

**LARRY EKKER,**

**Plaintiff,**

**vs.**

**NATIONAL PARK SERVICE a Federal  
Agency of the UNITED STATES OF  
AMERICA,**

**Defendant.**

**ORDER REGARDING DEFENDANT'S  
MOTION IN LIMINE**

**Case No. 2:06CV744 DAK**

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This matter is before the court on Defendant's Motion in Limine Regarding Proffered Testimony of F. David Pierce. Defendant argues that Mr. Pierce's expert testimony should be excluded because he has "merely summarized the deposition testimony and rendered his opinion about the fault of the various personnel involved in moving the dock ramp on September 9, 2004."

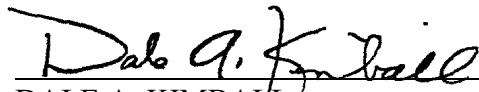
In Plaintiff's Memorandum in Opposition to the Motion in Limine, Plaintiff sets forth Mr. Pierce's preliminary opinions. The court will permit Mr. Pierce to testify, particularly regarding ANSI standards and OSHA regulations and their application to the incident at issue in this lawsuit. Based on the preliminary opinions set forth in the Opposition Memorandum, however, it appears as though many of the "opinions" that will be offered are merely background facts that will be elicited from others during the trial. The court cautions Plaintiff not to offer

redundant factual testimony. In addition, Mr. Pierce will not be permitted to testify as to the ultimate issue in this case – who is at fault and how to allocate any such fault. Specifically, Mr. Pierce will not be able to offer his opinions set forth in his Preliminary Opinion ¶ 12, found on page 4 of the Opposition Memorandum. These opinions violate the province of the fact finder.

Accordingly, for the foregoing reasons, IT IS HEREBY ORDERED that Defendant's Motion in Limine Regarding Proffered Testimony of F. David Pierce [docket # 20] is GRANTED in part and DENIED in part, as set forth above.

DATED this 14<sup>th</sup> day of January, 2009.

BY THE COURT:

  
\_\_\_\_\_  
DALE A. KIMBALL  
United States District Judge

BRETT L. TOLMAN, United States Attorney (No. 8821)  
JOHN W. HUBER, Assistant United States Attorney (No. 7226)  
Attorneys for the United States of America  
185 South State Street, Suite 400  
Salt Lake City, Utah 84111  
Telephone: (801) 524-5682

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IN THE UNITED STATES DISTRICT COURT  
DISTRICT OF UTAH, CENTRAL DIVISION

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UNITED STATES OF AMERICA,	:	Case No. 2:07 CR 53 DAK
Plaintiff,	:	ORDER ON TRIAL SETTING
v.	:	
WILLIAM HARRISON,	:	JUDGE DALE A. KIMBALL
Defendant.	:	
	:	

---

The Court is informed that physical evidence has been discovered as the parties have prepared for trial, including hand and fingerprints, and an item that may reveal DNA evidence related to the robberies in this case. These items must be further analyzed and compared in a laboratory setting. With the possible DNA evidence, in particular, it must be sent to the FBI Laboratory in Quantico, Virginia for analysis which is a process that will require up to three months to complete. The parties agree and stipulate that the current trial setting for January 26, 2009 should be continued and they have jointly made a motion for continuance. The Court recognizes that the charges against the defendant involve three separate bank robberies, multiple witnesses, and complicated legal issues. After duly considering the dynamics of the case, the

burden for counsel to adequately prepare for trial, and for other good cause shown, the following is entered:

1. The January 26, 2009 trial is stricken;
2. A five day trial is now set to begin on May 18, 2009; and
3. The Court orders that any period of delay until the rescheduled trial date shall be excluded from the Speedy Trial Act pursuant to 18 U.S.C. § 3161(h)(1)(F) and (h)(8)(A). The Court finds that the ends of justice served by setting this trial date outweigh the interests of the public and the defendant in a speedy trial.

Dated this 14<sup>th</sup> day of January, 2009.

BY THE COURT:

  
DALE A. KIMBALL  
DISTRICT COURT JUDGE

# UNITED STATES DISTRICT COURT

Central

U.S. District Court

Utah

UNITED STATES OF AMERICA  
V.

Danny Dutton

2009 JAN 14 10:28

## AMENDED JUDGMENT IN A CRIMINAL CASE

Case Number:

DUTX 2:07CR00371-001 TC

USM Number:

14604-081

J. Edward Jones

Defendant's Attorney

Date of Original Judgment: 1/9/2009  
(Or Date of Last Amended Judgment)

### Reason for Amendment:

- ☐ Correction of Sentence on Remand (18 U.S.C. 3742(f)(1) and (2))  
☐ Reduction of Sentence for Changed Circumstances (Fed. R. Crim. P. 35(b))  
☐ Correction of Sentence by Sentencing Court (Fed. R. Crim. P. 35(a))  
☒ Correction of Sentence for Clerical Mistake (Fed. R. Crim. P. 36)

- ☐ Modification of Supervision Conditions (18 U.S.C. §§ 3563(c) or 3583(e))  
☐ Modification of Imposed Term of Imprisonment for Extraordinary and Compelling Reasons (18 U.S.C. § 3582(c)(1))  
☐ Modification of Imposed Term of Imprisonment for Retroactive Amendment(s) to the Sentencing Guidelines (18 U.S.C. § 3582(c)(2))  
☐ Direct Motion to District Court Pursuant ☐ 28 U.S.C. § 2255 or ☐ 18 U.S.C. § 3559(c)(7)  
☐ Modification of Restitution Order (18 U.S.C. § 3664)

### THE DEFENDANT:

- ☐ pleaded guilty to count(s) \_\_\_\_\_  
☐ pleaded nolo contendere to count(s) \_\_\_\_\_  
which was accepted by the court.  
☒ was found guilty on count(s) One of the Indictment \*  
after a plea of not guilty.

The defendant is adjudicated guilty of these offenses:

Title & Section	Nature of Offense	Offense Ended	Count
18 USC § 922(g)(1)	Felon in Possession of a Firearm and Ammunition		1

The defendant is sentenced as provided in pages 2 6 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

- ☐ The defendant has been found not guilty on count(s) \_\_\_\_\_  
☐ Count(s) \_\_\_\_\_ ☐ is ☐ are dismissed on the motion of the United States.

It is ordered that the defendant must notify the United States Attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid. If ordered to pay restitution, the defendant must notify the court and United States attorney of material changes in economic circumstances.

1/13/2009

Date of Imposition of Judgment

Signature of Judge

Tena Campbell

Chief, United States District Court Judge

Name and Title of Judge

Date

1/14/2009

DEFENDANT: Danny Dutton  
CASE NUMBER: 2:07CR00371-001 TC

## IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a total term

**37 Month, with credit for time served**

☒ The court makes the following recommendations to the Bureau of Prisons:  
**The Court recommends the defendant serve his sentence as near to the State of Utah to allow family visitations, preferably Arizona or California.**

☒ The defendant is remanded to the custody of the United States Marshal.

☐ The defendant shall surrender to the United States Marshal for this district:

☐ at \_\_\_\_\_ ☐ a.m. ☐ p.m. on \_\_\_\_\_

☐ as notified by the United States Marshal.

☐ The defendant shall surrender for service of sentence at the institution designated by the Bureau of Prisons:

☐ before 2 p.m. on \_\_\_\_\_

☐ as notified by the United States Marshal.

☐ as notified by the Probation or Pretrial Services Office.

## RETURN

I have executed this judgment as follows:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Defendant delivered on \_\_\_\_\_ to \_\_\_\_\_

a \_\_\_\_\_ with a certified copy of this judgment.

\_\_\_\_\_  
UNITED STATES MARSHAL

By \_\_\_\_\_  
DEPUTY UNITED STATES MARSHAL

DEFENDANT: Danny Dutton  
CASE NUMBER: 2:07CR00371-001 TC

### SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be on supervised release for a term of  
**36 Months**

The defendant must report to the probation office in the district to which the defendant is released within 72 hours of release from the custody of the Bureau of Prisons.

The defendant shall not commit another federal, state, or local crime.

The defendant shall not unlawfully possess a controlled substance. The defendant shall refrain from any unlawful use of a controlled substance. The defendant shall submit to one drug test within 15 days of release from imprisonment and at least two periodic drug tests thereafter, as determined by the court.

- ☐ The above drug testing condition is suspended, based on the court's determination that the defendant poses a low risk of future substance abuse. (Check, if applicable.)
- ☒ The defendant shall not possess a firearm, ammunition, destructive device, or any other dangerous weapon. (Check, if applicable.)
- ☒ The defendant shall cooperate in the collection of DNA as directed by the probation officer. (Check, if applicable.)
- ☐ The defendant shall register with the state sex offender registration agency in the state where the defendant resides, works, or is a student, as directed by the probation officer. (Check, if applicable.)
- ☐ The defendant shall participate in an approved program for domestic violence. (Check, if applicable.)

If this judgment imposes a fine or restitution, it is a condition of supervised release that the defendant pay in accordance with the Schedule of Payments sheet of this judgment.

The defendant must comply with the standard conditions that have been adopted by this court as well as with any additional conditions on the attached page.

### STANDARD CONDITIONS OF SUPERVISION

- 1) the defendant shall not leave the judicial district without the permission of the court or probation officer;
- 2) the defendant shall report to the probation officer and shall submit a truthful and complete written report within the first five days of each month;
- 3) the defendant shall answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer;
- 4) the defendant shall support his or her dependents and meet other family responsibilities;
- 5) the defendant shall work regularly at a lawful occupation, unless excused by the probation officer for schooling, training, or other acceptable reasons;
- 6) the defendant shall notify the probation officer at least ten days prior to any change in residence or employment;
- 7) the defendant shall refrain from excessive use of alcohol and shall not purchase, possess, use, distribute, or administer any controlled substance or any paraphernalia related to any controlled substances, except as prescribed by a physician;
- 8) the defendant shall not frequent places where controlled substances are illegally sold, used, distributed, or administered;
- 9) the defendant shall not associate with any persons engaged in criminal activity and shall not associate with any person convicted of a felony, unless granted permission to do so by the probation officer;
- 10) the defendant shall permit a probation officer to visit him or her at any time at home or elsewhere and shall permit confiscation of any contraband observed in plain view of the probation officer;
- 11) the defendant shall notify the probation officer within seventy-two hours of being arrested or questioned by a law enforcement officer;
- 12) the defendant shall not enter into any agreement to act as an informer or a special agent of a law enforcement agency without the permission of the court; and
- 13) as directed by the probation officer, the defendant shall notify third parties of risks that may be occasioned by the defendant's criminal record, personal history, or characteristics and shall permit the probation officer to make such notifications and confirm the

DEFENDANT: Danny Dutton  
CASE NUMBER: 2:07CR00371-001 TC

### **SPECIAL CONDITIONS OF SUPERVISION**

1. The defendant shall maintain full-time, verifiable employment or participate in academic or vocational development throughout the term of supervision as deemed appropriate by the USPO.
2. The defendant will submit to drug/alcohol testing as directed by the probation office, and pay a one-time \$115 fee to partially defray the costs of collection and testing.
3. If testing reveals illegal drug use, or the USPO determines that an assessment is necessary, the defendant shall participate in substance abuse evaluation and treatment as recommended under a co-payment plan, as directed by the USPO.

During the course of treatment, the defendant shall not consume alcohol nor frequent any establishment where alcohol is the primary item of order.

4. The defendant shall submit his person, residence, office or vehicle to a search, conducted by a USPO at a reasonable time and in a reasonable manner, based upon reasonable suspicion of contraband or evidence of a violation of a condition of release; failure to submit to a search may be grounds for revocation; the defendant shall warn any other residents that the premises may be subject to searches pursuant to this condition.

DEFENDANT: Danny Dutton  
CASE NUMBER: 2:07CR00371-001 TC

### CRIMINAL MONETARY PENALTIES

The defendant must pay the following total criminal monetary penalties under the schedule of payments on Sheet 6.

	<u>Assessment</u>	<u>Fine</u>	<u>Restitution</u>
TOTALS	\$ 100.00	\$	\$

☐ The determination of restitution is deferred until \_\_\_\_\_. An Amended Judgment in a Criminal Case (AO 245C) will be entered after such determination.

☐ The defendant shall make restitution (including community restitution) to the following payees in the amount listed below.

If the defendant makes a partial payment, each payee shall receive an approximately proportioned payment, unless specified otherwise in the priority order or percentage payment column below. However, pursuant to 18 U.S.C. § 3664(i), all nonfederal victims must be paid before the United States is paid.

<u>Name of Payee</u>	<u>Total Loss*</u>	<u>Restitution Ordered</u>	<u>Priority or Percentage</u>
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TOTALS	\$ _____	\$ _____
--------	----------	----------

☐ Restitution amount ordered pursuant to plea agreement \$ \_\_\_\_\_

☐ The defendant must pay interest on restitution and a fine of more than \$2,500, unless the restitution or fine is paid in full before the fifteenth day after the date of the judgment, pursuant to 18 U.S.C. § 3612(f). All of the payment options on Sheet 6 may be subject to penalties for delinquency and default, pursuant to 18 U.S.C. § 3612(g).

☐ The court determined that the defendant does not have the ability to pay interest, and it is ordered that:

☐ the interest requirement is waived for ☐ fine ☐ restitution.

☐ the interest requirement for the ☐ fine ☐ restitution is modified as follows:

\* Findings for the total amount of losses are required under Chapters 109A, 110, 110A, and 113A of Title 18 for offenses committed on or after September 13, 1994, but before April 23, 1996.

DEFENDANT: Danny Dutton  
CASE NUMBER: 2:07CR00371-001 TC

### SCHEDULE OF PAYMENTS

Having assessed the defendant's ability to pay, payment of the total criminal monetary penalties shall be due as follows:

- A ☒ Lump sum payment of \$ 100.00 due immediately, balance due
- ☐ not later than \_\_\_\_\_, or  
☐ in accordance with ☐ C, ☐ D, ☐ E, or ☐ F below; or
- B ☐ Payment to begin immediately (may be combined with ☐ C, ☐ D, or ☐ F below); or
- C ☐ Payment in equal \_\_\_\_\_ (e.g., weekly, monthly, quarterly) installments of \$ \_\_\_\_\_ over a period of \_\_\_\_\_ (e.g., months or years), to commence \_\_\_\_\_ (e.g., 30 or 60 days) after the date of this judgment; or
- D ☐ Payment in equal \_\_\_\_\_ (e.g., weekly, monthly, quarterly) installments of \$ \_\_\_\_\_ over a period of \_\_\_\_\_ (e.g., months or years), to commence \_\_\_\_\_ (e.g., 30 or 60 days) after release from imprisonment to a term of supervision; or
- E ☐ Payment during the term of supervised release will commence within \_\_\_\_\_ (e.g., 30 or 60 days) after release from imprisonment. The court will set the payment plan based on an assessment of the defendant's ability to pay at that time; or
- F ☐ Special instructions regarding the payment of criminal monetary penalties:

Unless the court has expressly ordered otherwise, if this judgment imposes imprisonment, payment of criminal monetary penalties is due during the period of imprisonment. All criminal monetary penalties, except those payments made through the Federal Bureau of Prisons' Inmate Financial Responsibility Program, are made to the clerk of the court.

The defendant shall receive credit for all payments previously made toward any criminal monetary penalties imposed.

☐ Joint and Several

Defendant and Co-Defendant Names and Case Numbers (including defendant number), Joint and Several Amount, and corresponding payee, if appropriate.

☐ The defendant shall pay the cost of prosecution.

☐ The defendant shall pay the following court cost(s):

☒ The defendant shall forfeit the defendant's interest in the following property to the United States:  
**.357 Smith and Wesson Revolver and 6-hollow-point bullets**

Payments shall be applied in the following order: (1) assessment, (2) restitution principal, (3) restitution interest, (4) fine principal, (5) fine interest, (6) community restitution, (7) penalties, and (8) costs, including cost of prosecution and court costs.

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF UTAH  
U.S. DISTRICT COURT**

**UNITED STATES OF AMERICA**

**Plaintiff,**

**MICHAEL W. HOLYFIELD**

**Defendant**

: 2009 JAN 14 P 3:13

: DISTRICT **ORDER FOR PSYCHOSEXUAL**  
: **EXAMINATION & TESTING**  
: BY: DEPUTY CLERK

: **2:07-CR-00872-001-DB**

It appears that psychosexual examination and testing of the defendant is necessary in order that a more complete presentence report may be prepared pursuant to Rule 32(c) of the Federal Rules of Criminal Procedure.

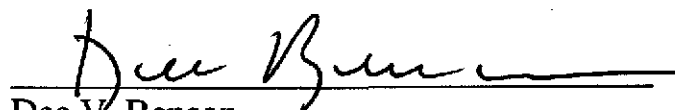
IT IS THEREFORE ORDERED that the defendant submit to an examination conducted by a qualified practitioner as directed by the Probation Office to provide information to the Court pursuant to 5 U.S.C. § 3109.

IT IS FURTHER ORDERED that investigative information may be released to the provider for purposes of testing and evaluation.

IT IS FURTHER ORDERED that the United States Probation Office shall pay all reasonable and necessary expenses from funds allocated for such purposes.

DATED this 14<sup>th</sup> day of January, 2009.

BY THE COURT:

  
Dee V. Benson  
United States District Judge

FILED  
U.S. DISTRICT COURT

2009 JAN 14 A 11:15

DISTRICT OF UTAH

BY: \_\_\_\_\_  
DEPUTY CLERK

MARY C. CORPORON #734  
Attorney for Defendant  
CORPORON & WILLIAMS, P.C.  
405 South Main Street, Suite 700  
Salt Lake City, Utah 84102  
Telephone: (801) 328-1162  
Facsimile: (801) 328-9565

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UNITED STATES DISTRICT COURT  
CENTRAL DIVISION OF UTAH

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UNITED STATES OF AMERICA,

Plaintiff,

-vs-

WAYNE REED OGDEN,

Defendant.

: **ORDER EXTENDING MOTION**  
: **DEADLINE**  
:  
:  
:  
:  
:

: Case No. 2:07-CR-900

: Judge Clark Waddoups

: Magistrate Judge Samuel Alba

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Based upon the motion of the Defendant, and for good cause appearing, IT IS HEREBY  
ORDERED, ADJUDGED, AND DECREED:

That the Defendant, Wayne Reed Ogden, is granted an extension of time in which to file  
pre-trial motions, until February 14, 200~~8~~<sup>9</sup>.

DATED this 13<sup>th</sup> day of January, 2009.

BY THE COURT:



SAMUEL ALBA

United States Magistrate Judge

FILED  
U.S. DISTRICT COURT

2009 JAN 14 A 8:20

IN THE UNITED STATES DISTRICT COURT

DISTRICT OF UTAH

DISTRICT OF UTAH, CENTRAL DIVISION

BY: DEPUTY CLERK

UNITED STATES OF AMERICA,

Plaintiff,

v.

ALLEN AUSTIN

Defendant.

**ORDER TO CONTINUE  
JURY TRIAL**

Case No. 2:07-CR-902

Based on the motion to continue trial filed by defendant in the above-entitled case, and good cause appearing,

It is hereby ORDERED that the trial previously scheduled for January 13, 2009, is hereby continued to the 4<sup>th</sup> day of May, 2009, at 8:30 .m. Pursuant to 18 U.S.C. § 3161(h), the Court finds the ends of justice served by such a continuance outweigh the best interests of the public and the defendant in a speedy trial. Accordingly, the time between the date of this order and the new trial date is excluded from speedy trial computation.

Dated this 13<sup>th</sup> day of January, 2009.

BY THE COURT:



United States District Court Judge

BRETT L. TOLMAN, United States Attorney (#8821)  
NICK M. NEWBOLD, Special Assistant U.S. Attorney (#4100)  
JOHN S. GYGI, Special Assistant U.S. Attorney (#5476)  
Attorneys for the United States of America  
125 South State Street, Room 2227  
Salt Lake City, Utah 84138  
(801) 524-3205  
john.gygi@sba.gov

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IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF UTAH  
CENTRAL DIVISION

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THE UNITED STATES OF AMERICA,	)	
through its agency, THE SMALL BUSINESS	)	
ADMINISTRATION,	)	
	)	Civil No. 2:07cv00030 DAK
Plaintiff,	)	
	)	
v.	)	
	)	
CHRISTI JO ANDERSON, SHYAN K.	)	
VALENTINE, and CHRIS M. VALENTINE	)	
	)	
Defendants.	)	
_____	)	
	)	
CHRISTI JO ANDERSON,	)	
	)	
Third Party Plaintiff,	)	
	)	
v.	)	
	)	
GARY M. JOHNSON,	)	
	)	
Third Party Defendant.	)	
	)	

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ORDER OF JUDGMENT

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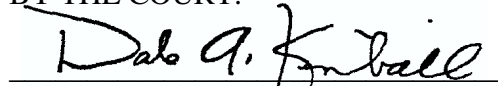
On or about May 2, 2007, Plaintiff, the United States of America, obtained default judgment against Defendants Shyan K. Valentine and Chris M. Valentine on the Second and Third Causes of Action in Plaintiff's Complaint. Plaintiff then filed a Motion for Summary Judgment in this matter against Defendant Christi Jo Anderson on the First Cause of Action in Plaintiff's Complaint. A hearing on the motion was held on September 16, 2008. Plaintiff was represented by John S. Gygi and Nick M. Newbold. Defendant Christy Jo Anderson was represented by David D. Jeffs. Based upon the pleadings and the hearing, and the Memorandum Decision and Order issued in relation thereto:

IT IS HEREBY ORDERED that Plaintiff is awarded final judgment on the First Cause of Action in its complaint against Christi Jo Anderson in the amount of \$91,888.05, plus interest at the rate of 5% per annum from January 16, 2007, to the date of judgment, plus interest at the judgment rate thereafter.

IT IS FURTHER ORDERED that, pursuant to Rule 54(b) of the Federal Rules of Civil Procedure, Plaintiff is awarded final judgment against Shyan K. Valentine and Chris M. Valentine in the amount set forth in the default judgments previously obtained.

Dated the 14<sup>th</sup> day of January, 2009.

BY THE COURT:

A handwritten signature in black ink, appearing to read "Dale A. Kimball", is written over a horizontal line.

Honorable Dale A. Kimball  
United States District Court Judge

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**IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH**  
**CENTRAL DIVISION**

---

**DEAN WARMINGTON,**

**Plaintiff,**

**vs.**

**BUDDY KEETH,**

**Defendant.**

**TRIAL ORDER**

**Case No. 2:07CV92 DAK**

---

This case is set for a five-day jury trial to begin on **Monday, March 23, 2009** at 8:30 a.m.

In order to expedite the conduct of the trial in this case, counsel are instructed as follows:

**A. Proposed Voir Dire and Verdict Form**

*1. Proposed Voir Dire*

The parties must file any proposed voir dire by no later than **March 18, 2009**.

*2. Special Verdict Form*

The parties must file a proposed special verdict form by no later than **March 18, 2009**. In addition to filing a proposed special verdict form, the parties must also send the proposed special verdict form via email to ["utdecf\\_kimball@utd.uscourts.gov"](mailto:utdecf_kimball@utd.uscourts.gov) in WordPerfect or Word format.

**B. Jury Instructions**

A copy of the court's stock civil jury instructions are attached to this Trial Order. The stock jury instructions should *not* be resubmitted to the court with the parties' proposed jury instructions. All applicable stock jury instructions will be used at trial, absent a compelling reason why a particular instruction should be modified or should not be used. The parties shall

not, absent a compelling reason, submit instructions that are duplicative of the stock jury instructions.

All additional substantive jury instructions must be submitted according to the following procedure:

1. The parties are required to jointly submit one set of *stipulated* final instructions. To this end, the parties must serve their proposed instructions upon each other by **February 27, 2009**. The parties must then meet and confer to agree on a single set of jury instructions, to the extent possible.
2. If the parties cannot agree upon a complete set of final instructions, they may submit separately those instructions upon which they cannot agree. However, the parties are expected to agree upon the majority of the substantive instructions for the case.
3. The stipulated jury instructions and each party's supplemental jury instructions, which must include citations to authority, shall be filed by **March 5, 2009**. In addition, by the same date, the parties shall email (in WordPerfect or Word format) the proposed stipulated instructions and any supplemental proposed instructions to the chambers email address listed above.
4. By no later than **March 12, 2009**, each party must file any objections to the supplemental instructions proposed by the other party. All such objections must recite the proposed disputed instruction in its entirety and specifically highlight the objectionable language in the proposed instruction. Each objection must contain citations to authority and a concise argument explaining why the

instruction is improper. If applicable, the objecting party should submit an alternative instruction addressing the subject or principle of law. By the same date, the party filing any objections shall also email (in WordPerfect or Word format) the objections to the chambers email address listed above.

5. By no later than **March 19, 2009**, the parties may file and serve a concise written argument supporting their proposed instructions to which the other party has objected.

### **C. Pretrial Order**

A stipulated Pretrial Order must be filed by **February 23, 2009**. The form of the Pretrial Order should generally conform to the approved form that is reproduced as Appendix IV to the Local Rules of Practice.

### **D. Motions in Limine**

All motions in limine shall be filed by **March 5, 2009**. Responses to the motions shall be filed by **March 12, 2009**. A hearing on the motions, if necessary, will be held during the week of **March 16, 2009**.

### **E. Exhibits**

All exhibits must be premarked before trial. Plaintiff's exhibits should be marked numerically, and Defendant's exhibits should be marked alphabetically.

#### **F. Trial Schedule**

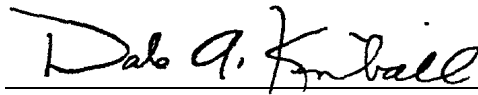
The court runs its trial schedule from 8:30 a.m. to approximately 2:00 p.m., with two fifteen-minute breaks.

#### **G. Pretrial Conference**

In light of this Trial Order, a pretrial conference is unnecessary. The final pretrial conference that is currently set for **March 9, 2009** is hereby **VACATED**.

DATED this 14<sup>th</sup> day of January, 2009.

BY THE COURT:

A handwritten signature in black ink, reading "Dale A. Kimball", is written over a horizontal line.

DALE A. KIMBALL  
United States District Judge

**JUDGE KIMBALL'S**  
**STOCK JURY INSTRUCTIONS**  
**CIVIL CASES**

**(Some instructions might not apply or might need to be tailored to the specific case)**

**JURY INSTRUCTION NO. \_\_\_\_**

Now that you have heard the evidence and are about to hear the argument, it is my duty to give you the instructions of the Court concerning the law applicable to this case. It is your duty as jurors to follow the law as stated in the instructions of the Court, and to apply the rules of law to the facts as you find them from the evidence in the case. You are not to single out one instruction alone as stating the law, but must consider the instructions as a whole.

Neither are you to be concerned with the wisdom of any rule of law stated by the Court. Regardless of any opinion you may have as to what the law is or ought to be, it would be a violation of your sworn duty, as judges of the facts, to base a verdict upon anything but the law as I instruct you and the evidence in the case.

Nothing I say in these instructions is to be taken as an indication that I have any opinion about the facts of the case, or what that opinion is. It is not my function to determine the facts; it is your function as jurors.

Justice through trial by jury depends upon the willingness of each individual juror to seek the truth as to the facts from the same evidence presented to all the jurors, and to arrive at a verdict by applying the same rules of law, as given in these instructions. You are to perform this duty without bias or prejudice as to any party. Our system of law does not permit jurors to be governed by sympathy, prejudice, or public opinion. Both the parties and the public expect that you will carefully and impartially consider all the evidence in the case, follow the law as stated by the Court, and reach a just verdict, regardless of the circumstances.

**JURY INSTRUCTION NO. \_\_\_\_**

The evidence in this case consists of the sworn testimony of the witnesses, all exhibits received in evidence, all facts that may have been admitted or stipulated, and the applicable presumptions that will be stated in these instructions.

Statements and arguments of counsel are not evidence in this case. When, however, the attorneys on both sides stipulate or agree as to the existence of a fact, the jury must, unless otherwise instructed, accept the stipulation and regard that fact as conclusively proved.

During the course of trial, it often becomes the duty of counsel to make objections. You should not consider or be influenced by the fact that objections have been made. Any evidence to which an objection was made and sustained by the Court, and any evidence ordered stricken by the Court, must be entirely disregarded.

Anything you may have seen or heard outside of this courtroom is not evidence and must be entirely disregarded. You are to consider only the evidence in this case. However, in your consideration of the evidence, you are not limited to the bald statements of the witnesses. On the contrary, you are permitted to draw from the facts that you find have been proved, such reasonable inferences as seem justified in light of your experience. An inference is a deduction or conclusion that reason and common sense would lead you to draw from facts that are established by the evidence in the case.

**JURY INSTRUCTION NO. \_\_\_\_**

There are, generally speaking, two types of evidence from which a jury may properly find the truth as to the facts of a case. One is direct evidence, such as the testimony of an eye witness. The other is indirect or circumstantial evidence, which is proof of a chain of circumstances pointing to the existence or non-existence of certain facts. The law makes no distinction between the weight to be given to either direct or circumstantial evidence, but simply requires that the jury find the facts in accordance with the preponderance of all the evidence in the case, both direct and circumstantial.

**JURY INSTRUCTION NO. \_\_\_\_**

You are the exclusive judges of the credibility of the witnesses and the weight of the evidence. You may believe or disbelieve all or any part of any witness' testimony. In judging the weight of the testimony and the credibility of the witnesses you have a right to take into consideration their bias, their interest in the result of the suit, their relationship to any of the parties in the case, or any probable motive or lack thereof to testify fairly, if any is shown. You may consider the witnesses' deportment upon the witness stand, the reasonableness of their statements, their apparent frankness or candor, or the want of it, their opportunity to know, their ability to understand, their capacity to remember, and the extent to which their testimony has been either supported or contradicted by other credible evidence in the case. You should consider these matters together with all of the other facts and circumstances that you may believe have a bearing on the truthfulness or accuracy of the witnesses' statements.

**JURY INSTRUCTION NO. \_\_\_\_**

Inconsistencies or discrepancies in the testimony of a witness or between the testimonies of different witnesses may or may not be cause to discredit the testimony of a witness. Two persons may see or hear the same event differently or reach different conclusions from the same facts. In weighing the effect of an inconsistency, consider the importance of the matter to which it pertains and whether the inconsistency may have resulted from innocent error, lapse of memory, or intentional falsehood. If there are apparent discrepancies in the evidence, you may be able to reconcile them, or you may have to decide which of two or more conflicting versions of the facts you will accept.

**JURY INSTRUCTION NO. \_\_\_\_**

If you believe any witness has willfully testified falsely as to any material matter, you may disregard the entire testimony of such witness, except as it may have been corroborated by other credible evidence.

**JURY INSTRUCTION NO. \_\_\_\_**

The rules of evidence ordinarily do not permit the opinion of a witness to be received as evidence. An exception to this rule exists in the case of expert witnesses. A person who, by education, study, and experience, has become an expert in any art, science, or profession, and who is called as a witness, may give his or her opinion as to any such matter in which he or she is versed and which is material to the case.

You are not bound, however, by such an opinion. You should judge expert opinion testimony just as you judge any other testimony. Give it the weight to which you deem it entitled, whether that be great or slight, and you may reject it, if in your judgment the reasons given for it are unsound.

**JURY INSTRUCTION NO. \_\_\_\_**

If any reference by the Court or by counsel to matters of evidence does not coincide with your own recollection, it is your recollection that should control during your deliberations.

**JURY INSTRUCTION NO. \_\_\_\_**

In this trial, certain testimony has been read to you by way of deposition. A deposition is testimony taken under oath before trial and preserved in one form or another. It is entitled to the same consideration as if the witness had personally appeared.

**JURY INSTRUCTION NO. \_\_\_\_**

In this case, Plaintiff has the burden of proving their claims against Defendant by a preponderance of the evidence. By a preponderance of the evidence, as that term is used in these instructions, is meant that evidence, which to your minds, is of the greater weight. The evidence preponderates to the side which, to your minds, seems to be the most convincing and satisfactory.

The preponderance of the evidence is not alone determined by the number of witnesses, nor the amount of testimony or documentary evidence, but rather the convincing character of the testimony and other evidence, and the inferences reasonably to be drawn therefrom, weighed by the impartial minds of the jury. This rule does not require proof to an absolute certainty, nor does it require proof beyond a reasonable doubt which is the standard applied in criminal cases. A party has succeeded in carrying the burden of proof by a preponderance of the evidence on an issue of fact if, after consideration of all the evidence in the case, the evidence favoring his or her side of the issue is more convincing to you than not.

**JURY INSTRUCTION NO. \_\_\_\_**

Your verdict must be based solely upon the evidence developed at this trial, or the lack of evidence. It would be improper for you to consider any personal feelings you may have about one of the parties' race, religion, national origin, sex, or age.

It would be equally improper for you to allow any feelings you might have about the nature of the claims against the Defendant to influence you in any way.

The parties in this case are entitled to a trial free from prejudice. Our judicial system cannot work unless you reach your verdict through a fair and impartial consideration of the evidence.

**[IF APPLICABLE:]**

Defendant is a corporation. A corporation is entitled to the same treatment as a private individual. You must consider and decide this case as a case between persons of equal rights, equal worth, and equal standing. All persons, including corporations, stand equal before the law and are to be dealt with as equals in a court of justice.

**JURY INSTRUCTION NO. \_\_\_\_**

Plaintiff bears the burden of proving by a preponderance of the evidence that they not only suffered damages but the amount of damages as well.

**JURY INSTRUCTION NO. \_\_\_\_**

Damages must be reasonable. You are not permitted to award speculative damages, which means compensation for a detriment which, although possible, is remote, or conjectural.

The damages that you award must be fair and reasonable, neither inadequate nor excessive. You should not award compensatory damages for speculative injuries, but only for those injuries that the Plaintiff has actually suffered or which they are reasonably likely to suffer in the near future.

In awarding compensatory damages, if you decide to award them, you must be guided by dispassionate common sense. Computing damages may be difficult, but you must not let that difficulty lead you to engage in arbitrary guesswork. On the other hand, the law does not require a Plaintiff to prove the amount of her losses with mathematical precision, but only with as much definiteness and accuracy as the circumstances permit.

**JURY INSTRUCTION NO. \_\_\_\_**

In this case you may not include in any award to Plaintiffs, any sum for the purpose of punishing Defendant, or to make an example of them for the public good or to prevent other incidents. **[Use if punitive damages are not sought]**

**JURY INSTRUCTION NO. \_\_\_\_**

Plaintiff has alleged that, as a result of Defendant's conduct, they have suffered pain, suffering and humiliation. Plaintiff has the burden of proving any compensatory damages by a preponderance of the evidence. If Plaintiff does not establish by a preponderance of the evidence that they have experienced pain, suffering, and humiliation that was proximately caused by Defendant's alleged wrongful conduct, then they cannot recover compensatory damages.

If you determine that Plaintiff has proven by a preponderance of the evidence that they have experienced pain, suffering, and humiliation that was proximately caused by Defendant's alleged wrongful conduct, you may award them damages for those injuries.

**JURY INSTRUCTION NO. \_\_\_\_**

The law forbids you to decide any issue in this case by resorting to chance. If you decide that a party is entitled to recover, you may then determine the amount of damages to be awarded. It would be unlawful for you to agree in advance to take the independent estimate of each juror, then total the estimates, draw an average from the total, and to make the average the amount of your award. Each of you may express your own independent judgment as to what the amount should be. It is your duty to thoughtfully consider the amounts suggested, test them in the light of the law and the evidence and, after due consideration, determine, which, if any, of such individual estimates is proper.

**JURY INSTRUCTION NO. \_\_\_\_**

The fact that I have instructed you concerning damages is not to be taken as an indication that I either believe or do not believe that Plaintiffs are entitled to recover such damages. The instructions in reference to damages are given as a guide in case you find from a preponderance of the evidence that Plaintiff is entitled to recover. However, if you determine that there should be no recovery, then you will entirely disregard the instructions given you upon the matter of damages.

**JURY INSTRUCTION NO. \_\_\_\_**

It is your duty, as jurors, to consult with one another and to deliberate with a view of reaching an agreement, if you can do so without violence to individual judgment. You must each decide the case for yourself, but only after an impartial consideration of the evidence in the case with your fellow jurors. In the course of your deliberations, do not hesitate to re-examine your own views, and change your opinion, if convinced it is erroneous. But do not surrender your honest conviction as to the weight or effect of evidence, solely because of the opinion of your fellow jurors, or for the mere purpose of returning a verdict.

Remember at all times that you are not partisans. You are judges—judges of the facts. Your sole interest is to seek the truth from the evidence in the case.

**JURY INSTRUCTION NO. \_\_\_\_**

When you retire to deliberate, you should first select one of your number to serve as foreperson to preside over your deliberations and be your spokesperson here in Court.

**JURY INSTRUCTION NO. \_\_\_\_**

If it becomes necessary during your deliberations to communicate with the Court, you may send a note by a Court Security Officer, signed by your foreperson, or by one or more members of the jury. No member of the jury should attempt to communicate with the Court by any means other than a signed writing, and the Court will never communicate with any member of the jury on any subject touching the merits of the case, other than in writing or orally here in open Court.

You will note from the oath about to be taken by the Court Security Officer that he, as well as all other persons, is forbidden to communicate in any way or manner with any member of the jury on any subject touching the merits of the case.

Bear in mind also that you are never to reveal to any person—not even to the Court—how the jury stands numerically or otherwise, until you have reached a unanimous verdict.

This case is being submitted to you by a Special Verdict, which asks you to answer certain questions. When you have answered all the questions required to be answered, please have your foreperson sign the Special Verdict form and advise the Court Security Officer that such has been done. You will then be returned to the courtroom, where the Special Verdict will be read.

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH  
Central Division for the District of Utah

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Stewart,

**Plaintiff,**

**vs.**

Stoller et al,

**Defendant.**

**SCHEDULING ORDER**

**Case No. 2:07-cv-552CW**

**District Judge Clark Waddoups**

**Magistrate Judge**

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Pursuant to Fed. R. Civ. P. 16(b), the Magistrate Judge<sup>1</sup> received the Attorneys' Planning Report filed by counsel (docket #51) and conducted an initial pretrial conference January 14, 2009 (docket #50). The following matters are scheduled. The times and deadlines set forth herein may not be modified without the approval of the Court and on a showing of good cause.

IT IS HEREBY ORDERED that any parties who are attorneys shall register as electronic filers within ten days using the information at [http://www.utd.uscourts.gov/cmecf/atty\\_reg.html](http://www.utd.uscourts.gov/cmecf/atty_reg.html). Training information for those who are not registered electronic filers in other districts is available at <http://www.utd.uscourts.gov/cmecf/training.html>.

**\*\*ALL TIMES 4:30 PM UNLESS INDICATED\*\***

- | <b>1. PRELIMINARY MATTERS</b>                           | <b><u>DATE</u></b> |
|---|--------------------|
| <b>Nature of claim(s) and any affirmative defenses:</b> |                    |
| a. Was Rule 26(f)(1) Conference held?                   | <u>No</u>          |
| b. Has Attorney Planning Meeting Form been submitted?   | <u>01/13/2009</u>  |
| c. Was 26(a)(1) initial disclosure completed?           | <u>02/09/2009</u>  |
- 
- | <b>2. DISCOVERY LIMITATIONS</b>                  | <b><u>NUMBER</u></b> |
|--|----------------------|
| a. Maximum Number of Depositions by Plaintiff(s) | <u>10</u>            |

**b. Maximum Number of Depositions by Defendant(s)**

Individuals on the issue of alleged access to the “Third Eye” Literary Work, in the creation of the Matrix 1, 2 and 3 movies and the Terminator 1, 2 and 3 movies, including interaction with associated screenwriters and ghost writers and drafts and originals of the Matrix story; and screenplays and drafts and originals of the Terminator story and screenplays - (15 to 20 individuals including 5 to 7 hours per 13 to 18 depositions and 21 hours for each of two depositions (Larry and Any Wachowski). Depositions of each of the names defendants, corporate representatives and each of their attorneys in the underlying action are necessary and each of the employees of the named corporate defendants who are identified as having made a contribution to the creation of Matrix 1, 2 and 3 and Terminator 1, 2 and 3.

**c. Maximum Number of Hours for Each Deposition**

7

See above. Further, the court limits the deposition of Sophia Stewart to three 7 hour days. The court may review this limitation after responses to written discovery have been received. Any defendant may submit a letter to [mj.nuffer@utd.uscourts.gov](mailto:mj.nuffer@utd.uscourts.gov) requesting reconsideration of this time limitation.

**d. Maximum Interrogatories by any Party to any Party**

30

**e. Maximum requests for admissions by any Party to any Party**

25

**f. Maximum requests for production by any Party to any Party**

35

**DATE**

**3. AMENDMENT OF PLEADINGS/ADDING PARTIES<sup>2</sup>**

**a. Last Day to File Motion to Amend Pleadings**

P 12/15/09

D 12/22/09

**b. Last Day to File Motion to Add Parties**

P 12/15/09

D 12/22/09

**4. RULE 26(a)(2) REPORTS FROM EXPERTS<sup>3</sup>**

**a. Plaintiff**

01/15/10

**b. Defendant**

03/15/10

**c. Counter Reports**

04/15/10

**5. OTHER DEADLINES**

- a. **Discovery to be completed by:**
- |                  |                 |
|------------------|-----------------|
| Fact discovery   | <u>01/15/10</u> |
| Expert discovery | <u>05/15/10</u> |
- b. **(optional) Final date for supplementation of disclosures and discovery under Rule 26 (e)** 12/15/09
- c. **Deadline for filing dispositive or potentially dispositive motions** 06/01/10

**6. SETTLEMENT/ ALTERNATIVE DISPUTE RESOLUTION**

- a. **Referral to Court-Annexed Mediation**
- b. **Referral to Court-Annexed Arbitration**
- c. **Evaluate case for Settlement/ADR on**
- d. **Settlement probability:**

**7. TRIAL AND PREPARATION FOR TRIAL:**

- a. **Rule 26(a)(3) Pretrial Disclosures<sup>4</sup>**
- |            |  |  |                 |
|------------|--|--|-----------------|
| Plaintiffs |  |  | <b>11/05/10</b> |
| Defendants |  |  | <b>11/19/10</b> |
- b. **Objections to Rule 26(a)(3) Disclosures**  
(if different than 14 days provided in Rule)
- DATE**
- c. **Special Attorney Conference<sup>5</sup> on or before** **12/03/10**
- d. **Settlement Conference<sup>6</sup> on or before** **12/03/10**
- e. **Final Pretrial Conference** **2:30 p.m.** **12/16/10**
- f. **Trial**
- |                | <b><u>Length</u></b> | <b><u>Time</u></b> | <b><u>Date</u></b> |
|----------------|----------------------|--------------------|--------------------|
| i. Bench Trial |                      |                    |                    |
| ii. Jury Trial | <u>19 days</u>       | <u>8:30 a.m.</u>   | <u>01/10/11</u>    |

**8. OTHER MATTERS:**

**Counsel should contact chambers staff of the District Judge regarding Daubert and Markman motions to determine the desired process for filing and hearing of such motions. All such motions, including Motions in Limine should be filed well in advance of the Final Pre Trial. Unless otherwise directed by the court, any challenge to the qualifications of an expert or the reliability of expert testimony under Daubert must be raised by written motion before the final pre-trial conference.**

**Dated this 14 day of January, 2009.**

**BY THE COURT:**

  
\_\_\_\_\_  
**David Nuffer**  
**U.S. Magistrate Judge**

1. The Magistrate Judge completed Initial Pretrial Scheduling under DUCivR 16-1(b) and DUCivR 72-2(a)(5). The name of the Magistrate Judge who completed this order should NOT appear on the caption of future pleadings, unless the case is separately referred to that Magistrate Judge. A separate order may refer this case to a Magistrate Judge under DUCivR 72-2 (b) and 28 USC 636 (b)(1)(A) or DUCivR 72-2 (c) and 28 USC 636 (b)(1)(B). The name of any Magistrate Judge to whom the matter is referred under DUCivR 72-2 (b) or (c) should appear on the caption as required under DUCivR10-1(a).
2. Counsel must still comply with the requirements of Fed. R. Civ. P. 15(a).
3. A party shall disclose the identity of each testifying expert and the subject of each such expert's testimony at least 60 days before the deadline for expert reports from that party. This disclosure shall be made even if the testifying expert is an employee from whom a report is not required.
4. Any demonstrative exhibits or animations must be disclosed and exchanged with the 26(a)(3) disclosures.
5. The Special Attorneys Conference does not involve the Court. Counsel will agree on voir dire questions, jury instructions, a pre-trial order and discuss the presentation of the case. Witnesses will be scheduled to avoid gaps and disruptions. Exhibits will be marked in a way that does not result in duplication of documents. Any special equipment or courtroom arrangement requirements will be included in the pre-trial order.
6. Counsel must ensure that a person or representative with full settlement authority or otherwise authorized to make decisions regarding settlement is available in person or by telephone during the Settlement Conference.

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\* \* \* \* \*

)  
) FILED  
) CLERK, U.S. DISTRICT COURT  
) January 14, 2009 (1:34pm)  
) DISTRICT OF UTAH

\* \* \* \* \*

Plaintiff Christy S. Love (“Love”) filed this action seeking judicial review of a final decision of defendant Michael J. Astrue, Commissioner of Social Security (the “Commissioner”), denying Love’s applications for disability insurance benefits and supplemental security income benefits under Titles II and XVI of the Social Security Act, 42 U.S.C. §§ 401-433 and 1381-1383c. This matter is currently before the court on Love’s Motion to Reverse or Modify Administrative Decision (dkt. no. 12) (Love’s “Motion”). The court heard oral argument on Love’s Motion on March 20, 2008. Michael E. Bulson appeared on behalf of Love, and Amy J. Oliver appeared on behalf of the Commissioner. The court has carefully considered the parties’ briefs and arguments, as well as the law and facts relevant to Love’s Motion. Now being fully advised, the court enters the following Memorandum Opinion & Order, vacating the ALJ’s decision and remanding this matter to the Commissioner for further proceedings in accordance with this opinion and order.

## I. BACKGROUND

Love was born on April 1, 1959. She earned a high school diploma and attended college for one year. Love last worked in April of 2002, as a merchandiser for Intermountain Greeting Cards, where she worked two or three days a week for a total of six to nine hours a week. Love's other past relevant work includes work as an office manager, a customer service manager, and a cashier checker.

On June 24, 2004, Love applied for disability insurance benefits and supplemental security income benefits under Titles II and XVI of the Social Security Act, claiming that she had been disabled since June 1, 1995. Love alleged that fibromyalgia, chronic fatigue syndrome, nerve damage, hip problems, irritable bowel syndrome, chronic muscle spasms, spinal arthritis, and sciatica limited her ability to work. Love's applications were denied initially and upon reconsideration. Thereafter, Love requested a hearing before an Administrative Law Judge (the "ALJ"), which was held on October 11, 2006. At the hearing, Love amended her alleged onset of disability date to March 1, 2002, and argued that her residual functional capacity is such that she is unable to perform any work.

On October 27, 2006, the ALJ issued a written decision determining that Love was not disabled within the meaning of the Social Security Act and denying Love's applications for benefits. The ALJ denied Love's disability claim at step four of the five-step sequential evaluation process used to determine whether an individual is disabled.<sup>1</sup> While the ALJ

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<sup>1</sup>In determining whether a claimant is disabled, the Commissioner considers, in sequence, whether the claimant: (1) is engaged in substantial gainful activity; (2) has a medically severe impairment or combination of impairments; (3) has an impairment that is equivalent to one of a number of impairments listed in the regulations as being so severe as to preclude substantial gainful activity; (4) is able to perform his or her past relevant work; and if not, (5) whether he or she is able to perform other work in the national economy. See 20 C.F.R. §§ 404.1520, 416.920; *Williams v. Bowen*, 844 F.2d 748, 750-51 (10th Cir. 1998).

determined at step two that Love's fibromyalgia, chronic fatigue syndrome, back disorder, bursitis of the hip, irritable bowel syndrome, and depression constituted severe impairments, he determined at step four that Love's residual functional capacity enabled her to perform her past relevant work as an office manager, a customer service manager and a cashier, and that she was therefore not disabled.<sup>2</sup> Specifically, the ALJ determined that

[Love] has the residual functional capacity to perform light work activity with the following limitations. She is able to lift/carry 20 pounds occasionally and 10 pounds frequently. During an 8-hour workday, she can sit 3-4 hours at a time up to 7-8 hours and stand 1-2 hours at a time up to 6 hours. She can occasionally, up to 1/3 of the time, walk, climb stairs, squat, bend/stoop, kneel, reach above her shoulders, use foot controls and drive. She can frequently, up to 2/3 of the time, push/pull, turn arms and wrists, open and close fists, and use her hands and fingers. She can continuously, up to 3/3 of the time, balance. She has normal grip strength in her left and right hands and has fine and manual dexterity in both hands. She has mild limitations in her ability to concentrate; to perform duties within a schedule; and to deal with stress. Her vision and hearing are normal. She is able to tolerate air pollutants and cold/hot settings.

(Admin. R. at 52.) According to the ALJ, Love's past relevant work as an office manager, a customer service manager, and a cashier would not require Love to perform activities precluded by her residual functional capacity.

In his decision, under the heading "Medical Evidence Related to Functioning," the ALJ summarized portions of the medical evidence in Love's record.

Under the separate heading "Medical Opinions," the ALJ briefly discussed the opinions of two non-examining State agency medical consultants. In November of 2004, nearly two years before Love's hearing in front of the ALJ, a non-examining State agency medical consultant completed a checklist form, marking boxes indicating among other things that Love was able to

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<sup>2</sup>At step one, the ALJ determined that Love had not engaged in substantial or gainful work activity since her amended onset of disability date of March 1, 2002. And at step three, the ALJ concluded that Love did not have an impairment or combination of impairments that met or equaled the criteria of a listed impairment.

frequently lift and/or carry ten pounds; occasionally lift and/or carry twenty pounds; sit for about six hours in an eight-hour workday; stand and/or walk for about six hours in an eight-hour workday; and push and pull without limitation. After completing the checklist form, the non-examining consultant concluded that Love's residual functional capacity enabled her to perform the requirements of light work. In March of 2005, a second non-examining State agency medical consultant reported that there was no new medical evidence indicating that Love's condition had objectively worsened and opined that the first consultant's opinion regarding Love's functional capacity for light work was correct.

The ALJ indicated in his decision that he had "considered and weighed" these opinions of the non-examining State agency medical consultants, but he did not explain the weight he had afforded such opinions. (Admin. R. at 68.)

Also under the heading "Medical Opinions," the ALJ discussed the opinions of several medical sources who had examined Love and had concluded that Love's functional capacity and ability to work were significantly more limited than the ALJ had determined. Specifically relevant for purposes of this case are the opinions of Linda Hensley, a licensed nurse practitioner; Albert E. Chandler, a physical therapist; Scott Carpenter, a physician assistant; and Paula Siciliano, a certified nurse practitioner (collectively referred to as the "non-physician sources").

Hensley repeatedly examined and treated Love from April of 2003 through August of 2004. On August 25, 2003, Hensley indicated in a letter addressed to the Department of Workforce Services that Love was unable to work at that time due to physical limitations.

Similarly, in February of 2004, after examining Love, considering her history, and

performing certain functional activity tests, Chandler opined in a Workplace Functional Ability Medical Report for the Department of Workforce Services that Love's functional capacity limited her to working approximately two to three hours a day or ten to fifteen hours a week. In addition, Chandler opined that Love's physical limitations required that she be free to move about and change positions as needed in the workplace. Chandler further opined that prolonged work at a computer or any repetitious arm work would be aggravating to Love.

In April of 2004, Carpenter, like Chandler, completed a Workplace Functional Ability Medical Report for the Department of Workforce Services. After examining Love, considering her history, and evaluating her performance in certain "laboratory and/or other specialized tests," Carpenter determined that Love could sit for about fifteen minutes at a time for a total of one to two hours a day. Carpenter also determined that Love could stand for about five to ten minutes at a time for a total of one to two hours per day. After considering Love's functional limitations, Carpenter concluded that Love was unable to work.

Finally, in September of 2006, Siciliano, who had examined Love ten times between October of 2005 and September of 2006, completed a medical report in connection with Love's application for supplemental security income and medicaid benefits. In her report, Siciliano opined that Love was only capable of working a total of two to three hours a day due to her need to frequently move, change positions, and lie down. Like Carpenter, Siciliano opined that during an eight-hour workday, Love could sit for about ten to fifteen minutes at a time for a total of two hours and could stand and walk for about five to ten minutes at a time for a total of eighty minutes. Siciliano determined that Love could not lift or carry any amount of weight and could not bend, squat, or reach. Siciliano also determined that during an eight-hour workday, Love

would need unscheduled breaks every five to ten minutes. Siciliano opined that on average, Love was likely to be absent from work more than four days per month because of her impairment and/or treatment. Like Hensley and Carpenter, Siciliano concluded that Love was not physically able to work on a regular and continuous basis.

After describing these opinions of the non-physician sources, the ALJ indicated that he had afforded such opinions “little weight.”

After the ALJ issued his decision determining that Love was capable of performing her past relevant work and was therefore not disabled, Love requested that the Appeals Council review the ALJ’s decision. On June 12, 2007, the Appeals Council denied Love’s request. Accordingly, the ALJ’s decision became the Commissioner’s final decision for purposes of judicial review. *See* 42 U.S.C. § 405(g); 20 C.F.R. §§ 404.981, 416.1481.

Love then filed this action seeking review of the Commissioner’s decision. Love argues that the ALJ failed to properly apply Social Security Ruling 06-03p in evaluating the opinions of the non-physician sources.<sup>3</sup> According to Love, had the ALJ properly analyzed the non-physician sources’ opinions under SSR 06-03p, he would have afforded such opinions more than

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<sup>3</sup>The Social Security regulations distinguish between “acceptable medical sources,” such as licensed physicians and psychologists, and “other sources” that are not considered “acceptable medical sources,” such as nurse practitioners, physician assistants, and therapists. 20 C.F.R. §§ 404.1513, 416.913; SSR 06-03p, 2006 WL 2329939, \*\*1-2 (S.S.A. Aug. 9, 2006). While information from “other sources” cannot establish the existence of a medically determinable impairment, it may provide insight into key issues such as impairment severity and functional effects and must be considered by an ALJ in making a disability determination. SSR 06-03p, 2006 WL 2329939, at \*\*1-3.

SSR 06-03p clarifies how an ALJ should consider and weigh opinions from “other sources.” *Id.* at \*1. SSR 06-03p provides that the factors for weighing the opinions of “acceptable medical sources” included in 20 C.F.R. §§ 404.1527(d) and 416.927(d) represent basic principles that apply to the consideration of the opinions from “other” medical sources. *Id.* at \*4. These factors include how long the source has known and how frequently the source has seen the individual; how consistent the opinion is with other evidence; the degree to which the source presents relevant evidence to support an opinion; how well the source explains the opinion; whether the source has a specialty or area of expertise related to the individual’s impairment(s); and any other factors that tend to support or refute the opinion. *Id.* at \*\*4-5.

“little weight” and would have concluded that Love’s functional limitations precluded her from performing her past relevant work. Love also contends that the ALJ’s determination regarding Love’s residual functional capacity is not supported by substantial evidence in the record.

During oral argument on Love’s motion, counsel for Love asked the court to remand this matter in order to allow the ALJ to re-evaluate the opinions of the non-physician sources pursuant to the factors set forth in SSR 06-03p and to provide a more specific explanation of his analysis of such factors in determining the weight to be afforded such opinions.

The Commissioner responds that the ALJ thoroughly discussed the non-physician sources’ opinions, cited SSR 06-03p, and provided a detailed explanation of why he weighed such opinions the way that he did. According to the Commissioner, the ALJ’s assessment of the opinions of the non-physician sources comported with the requirements of SSR 06-03p. The Commissioner also argues that there is sufficient evidence in the record to support the ALJ’s decision at step four that Love was not disabled.

## II. STANDARD OF REVIEW

In reviewing the Commissioner’s decision, the court may neither reweigh the evidence nor substitute its judgment for that of the Commissioner. *Hamlin v. Barnhart*, 365 F.3d 1208, 1214 (10th Cir. 2004). Instead, the court reviews the Commissioner’s decision “to determine whether the factual findings are supported by substantial evidence in the record and whether the correct legal standards were applied.” *Id.* (quoting *Doyal v. Barnhart*, 331 F.3d 758, 760 (10th Cir. 2003)). “Substantial evidence is such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.” *Hamlin*, 365 F.3d at 1214 (quoting *Doyal*, 331 F.3d at 760).

### III. DISCUSSION

Remand is appropriate in this case because the court, having carefully reviewed the ALJ's written decision, is unable to determine whether substantial evidence supports the ALJ's conclusions at step four of the evaluation process. It is simply not clear from the ALJ's decision what specific medical opinions or evidence he relied on as support for his determinations regarding Love's residual functional capacity and ability to perform her past relevant work.

In his decision, the ALJ explained that he had afforded "little weight" to the opinions of the non-physician sources. In other words, the ALJ made clear that he had not relied significantly on, or given substantial weight to, the opinions of the non-physician sources that Love was either unable to work (Hensley, Carpenter, and Siciliano) or was substantially limited in her ability to work (Chandler).<sup>4</sup> But what is not clear from the ALJ's opinion is what medical evidence or opinions *he did* rely on in reaching his conclusions regarding Love's ability to work.

Although the ALJ provided a detailed summary of portions of Love's medical records in his decision, the summary does not help the court follow the ALJ's reasoning at step four of the evaluation process. The ALJ's summary merely restates or describes certain medical evidence in the record. While some of the evidence summarized by the ALJ seems to support the ALJ's determination that Love's impairments were not of disabling severity, other evidence included in the summary seems to support Love's disability claim. The summary does not provide any

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<sup>4</sup>The court is unable to determine from the ALJ's decision whether the ALJ afforded some weight to, or completely rejected, the opinions of the non-physician sources. Unlike the ALJ's indication that he had afforded the opinion of Dr. Peggy Fujimura "no weight," (Admin. R. at 64), the ALJ did not expressly reject the non-physician sources' opinions. Instead, the ALJ indicated that he had afforded such opinions "little" – in other words, some – weight. The ALJ's conclusions regarding Love's residual functional capacity and ability to work, however, are in conflict with the opinions of the non-physician sources. If in forming his conclusions, the ALJ did in fact rely in some way on the non-physician sources' opinions or on certain evidence produced by the non-physician sources, the extent to which he did so is not clear from the ALJ's decision.

information regarding how the ALJ analyzed or weighed the summarized evidence. Nor does the summary explain what particular evidence the ALJ relied on as support for his determination regarding Love's residual functional capacity and ability to perform her past relevant work.

Similarly, the ALJ's discussion of the opinions of the non-examining State agency medical consultants is not helpful to the court in determining whether substantial evidence supports his conclusions at step four. Although the ALJ indicated that he had "weighed and considered" the opinions of the two non-examining consultants, he committed legal error by failing to explain the specific weight, if any, he afforded such opinions. *See* 20 C.F.R. § 404.1527(f)(2)(ii) (explaining that unless the treating source's opinion is given controlling weight, an administrative law judge must explain the weight given to the opinions of a State agency medical consultant in his decision); 20 C.F.R. § 416.927(f)(2)(ii) (same); *Hamlin*, 365 F.3d at 1223 ("If an ALJ intends to rely on a nontreating physician or examiner's opinion, he must explain the weight he is giving to it."); SSR 96-6p, 1996 WL 374180, \* 2 (S.S.A. July 2, 1996) ("Administrative law judges and the Appeals Council are not bound by findings made by State agency or other program physicians and psychologists, but they . . . must explain the weight given to the opinions in their decisions."). The similarities between the ALJ's and the non-examining consultants' opinions regarding Love's residual functional capacity suggest to the court that the ALJ relied considerably, if not exclusively, on the non-examining consultants' opinions in reaching his decision regarding Love's capacity to work. For instance, like the non-examining consultants, the ALJ concluded that Love was capable of performing light work activity. Moreover, consistent with the boxes checked on the first non-examining consultant's assessment form, the ALJ determined that Love had the physical capacity to frequently lift

and/or carry ten pounds; occasionally lift and/or carry twenty pounds; stand for six hours in an eight-hour workday; sit for six hours (or more) in an eight-hour workday, and frequently push and pull.<sup>5</sup> In the absence of a specific explanation from the ALJ regarding what weight he afforded the consultants' opinions, however, the court will not presume that the ALJ relied entirely or in part on such opinions as support for his determinations at step four.

As written, the ALJ's decision does not make clear how the ALJ reached his conclusions regarding Love's residual functional capacity and ability to work. And since it is the ALJ's responsibility to sufficiently explain the bases of his decision, the Commissioner's own post hoc explanations in this case as to what evidence in the record substantially supports the ALJ's decision is unavailing. *See Frantz v. Astrue*, 509 F.3d 1299, 1302 (10th Cir. 2007) ("The Commissioner's post hoc argument supplying possible reasons for the ALJ's seeming rejection of Ms. Youngs' opinions is unavailing."); *Allen v. Barnhart*, 357 F.3d 1140, 1142 (10th Cir. 2004) (indicating that affirming the district court's "post hoc effort to salvage the ALJ's decision would require [the court of appeals] to overstep [its] institutional role and usurp essential functions committed in the first instance to the administrative process"). Because the court cannot properly evaluate whether substantial evidence supports the ALJ's determination at step four that Love is not disabled, the court vacates the ALJ's decision and remands this case to the Commissioner for further proceedings consistent with this opinion and order.

On remand, the ALJ must explain in sufficient detail the medical evidence and opinions

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<sup>5</sup>The court has reviewed the record and is unaware of any other medical evidence or opinion in the record, besides the checklist form completed by the first non-examining consultant, that includes these specific findings regarding Love's ability to perform these specific activities. To the extent that there is such evidence in the record, the ALJ did not specify that he had relied on that evidence in reaching his conclusions regarding Love's residual functional capacity.

supporting his determinations regarding Love’s residual functional capacity and clearly set out his reasons for accepting or rejecting evidence at step four. *See Clifton v. Chater*, 79 F.3d 1007, 1010 (10th Cir. 1996) (“[I]n addition to discussing the evidence supporting his decision, the ALJ also must discuss the uncontroverted evidence he chooses not to rely upon, as well as significantly probative evidence he rejects.”). On remand, the ALJ must also explain the specific weight afforded to the opinions of the non-examining State agency medical consultants, if any. In determining how to weigh such opinions, the ALJ should consider that “[t]he regulations provide progressively more rigorous tests for weighing opinions as the ties between the source of the opinion and the individual become weaker.” SSR 96-6p, 1996 WL 374180, at \*2 (citing 20 C.F.R. §§ 404.1527(f), 416.927(f)). “[T]he opinions of physicians or psychologists who do not have a treatment relationship with the individual are weighed by stricter standards, based to a greater degree on medical evidence, qualifications, and explanations for the opinions, than are required of treating sources.” SSR 96-6p, 1996 WL 374180, at \*2.

For this reason, the opinions of State agency medical and psychological consultants and other program physicians and psychologists can be given weight only insofar as they are supported by evidence in the case record, considering such factors as the supportability of the opinion in the evidence including any evidence received at the administrative law judge and Appeals Council levels that was not before the State agency, the consistency of the opinion with the record as a whole, including other medical opinions, and any explanation for the opinion provided by the State agency medical or psychological consultant or other program physician or psychologist. The adjudicator must also consider all other factors that could have a bearing on the weight to which an opinion is entitled, including any specialization of the State agency medical or psychological consultant.

*Id.* The ALJ must apply these rigorous standards in determining the appropriate weight to be

afforded the opinions of the non-examining State agency medical consultants on remand.<sup>6</sup> The ALJ must also consider the Tenth Circuit's holding in *Frey v. Bowen*, that boxes checked on an evaluation form by a nontreating physician, "standing alone, unaccompanied by thorough written reports or persuasive testimony, are not substantial evidence." 816 F.2d 508, 515 (10th Cir. 1987); *see id.* (indicating that "findings of a nontreating physician based upon limited contact and examination are of suspect reliability").

Finally, the court agrees with Love's contention that the ALJ has not clearly applied SSR 06-03p in determining what weight to afford the opinions of the non-physician sources and that he must therefore do so on remand. Under SSR 06-03p, the ALJ should have considered the following factors in evaluating the non-physician sources' opinions: how long the source had known and how frequently the source had seen the individual; how consistent the source's opinion was with the other evidence in the record; the degree to which the source presents relevant evidence to support his or her opinion; how well the source explained his or her opinion; the source's speciality or area of expertise, if any; and any other factors that supported or refuted the source's opinion. SSR 06-03p, 2006 WL 2329939, at \*\*4-5. While not every one of these factors will apply in every case,

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<sup>6</sup>The ALJ's decision makes clear that the ALJ failed to apply these standards in analyzing the opinions of the non-examining consultants in the first instance. The ALJ's analysis of the non-examining consultants' opinions was explained in only one paragraph of his twenty-three-page decision. In that paragraph, the ALJ described the non-examining consultants' summary of Love's activities of daily living and generally asserted that "[a]lthough the State agency physicians did not examine the claimant, they provided specific reasons for their opinions about the claimant's residual functional capacity showing that the opinions were grounded in the evidence in the case." (Admin. R. at 68.) But the ALJ failed to highlight any specific portion of the record that either supported or was consistent with the non-examining consultants' opinions. Similarly, the ALJ did not discuss the thoroughness or persuasiveness of the non-examining consultants' explanations for their opinions. Nor did the ALJ discuss whether at the time of Love's hearing in October of 2006, there was any relevant evidence before him that was not considered at the time the non-examining consultants formed their opinions in November of 2004 and in March of 2005. In sum, the ALJ's decision does not make clear that he subjected the non-examining consultants' opinions to the "rigorous" analysis that is required "as the ties between the source of the opinion and the [claimant] become weaker." SSR 96-6p, 1996 WL 374180, at \*2.

the adjudicator generally should explain the weight given to opinions from these “other sources,” or otherwise ensure that the discussion of the evidence in the determination or decision allows a claimant or subsequent reviewer to follow the adjudicator’s reasoning, when such opinions may have an effect on the outcome of the case.

*Id.* at \*6.

In discussing the opinions of the non-physician sources, the ALJ cited to SSR 06-03p and set forth various reasons as to why he afforded each of their opinions “little weight.” But absent from the ALJ’s discussion is any explanation regarding whether he considered a number of the factors set forth in SSR 06-03p in determining what weight to afford such opinions. For instance, there is no express indication in the ALJ’s decision that he considered whether, or to what extent, the non-physician sources’ opinions were consistent with or supported by other evidence in record. Also missing from the ALJ’s discussion is an explanation of whether, or to what extent, Hensley’s and Siciliano’s treatment relationship with Love factored into the ALJ’s weighing of their opinions. These are just a couple of examples of how despite repeatedly citing SSR 06-03p in his decision, the ALJ’s discussion does not make clear to the court that he genuinely considered the factors described in SSR 06-03p in determining what weight to afford the opinions of the non-physician sources. The court will not presume that the ALJ properly evaluated the opinions of the non-physician sources under SSR 06-03p simply because the ALJ cited to that ruling in his decision.

After examining Love, the four non-physician sources each concluded that Love was either not able to work or was substantially limited in her capacity to work. Had the ALJ given more weight to one or more of these opinions, his conclusions at step four would likely have been different. Under these circumstances – and particularly in light of the ALJ’s failure to describe with sufficient clarity the bases for his conclusions at step four – the court determines

that on remand, the ALJ should reconsider the opinions of the non-physician sources pursuant to the factors described in SSR 06-03p and ensure that his decision explicitly describes his consideration of such factors. The court expresses no opinion as to the weight that should be afforded such opinions, as that is an issue for the Commissioner to determine.

On remand, the ALJ is free to modify his findings at step four of the evaluation process, if appropriate.

For the reasons stated above, Love's Motion (dkt. no. 12) is GRANTED to the extent that the court vacates the Commissioner's decision and remands this matter to the Commissioner for further proceedings consistent with this opinion and order.

SO ORDERED.

DATED this \_\_\_\_ day of January, 2009.

BY THE COURT:

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Bruce S. Jenkins  
United States Senior District Judge

Phillip S. Ferguson, 1063  
Scot A. Boyd, 9503  
Christensen & Jensen, P.C.  
15 West South Temple, Suite 800  
Salt Lake City, UT 84101  
Telephone: (801) 323-5000  
*Attorneys for Defendants Shoolery Design, Inc., and Mark A. Shoolery*

FILED  
U.S. DISTRICT COURT  
2009 JAN 13 P 3:02  
DISTRICT OF UTAH  
BY: u  
CLERK

**IN THE UNITED STATES DISTRICT COURT  
DISTRICT OF UTAH, CENTRAL DIVISION**

SUMMIT FINANCIAL RESOURCES, L.P., a  
Hawaii limited partnership,

Plaintiff,

vs.

SHOOLERY DESIGN, INC., a California  
corporation, and MARK A. SHOOLERY, an  
individual,

Defendants.

**ORDER FOR SECOND AMENDED  
SCHEDULING ORDER**

Case No. 2:07-cv-00595

Judge Bruce S. Jenkins

Based on the Second Stipulated Motion to Amend Scheduling Order submitted by  
counsel for the defendants and for good cause contained therein,

It is hereby **ORDERED** that the Scheduling Order for this case will be amended as follows:

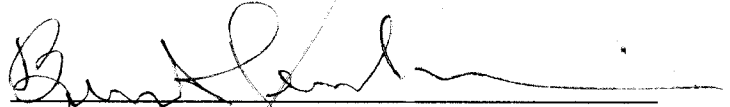
Deadlines and Dates:

- |                |  |
|----------------|--|
| April 10, 2009 | Deadline for completion of discovery, including expert discovery, if any. All requests for admissions, interrogatories, and requests for production shall be served in sufficient time that the answers will be due by the deadline for completion of discovery. |
| May 1, 2009    | Deadline for filing dispositive motions.   |
| June 5, 2009   | Parties to file Stipulated Pretrial Order listing disputed issues of law and fact, roster of witnesses, and roster of exhibits.  |
| June 12, 2009  | 9:30 a.m. – Pretrial Conference. The parties shall be prepared to discuss the facts of the case, legal authorities and theories.   |

2:07 LV-595 I

DATED this 13 day of January, 2009.

BY THE COURT:

A handwritten signature in black ink, appearing to read "Bruce S. Jenkins", written over a horizontal line.

Judge Bruce S. Jenkins  
United States District Court

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**IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH**  
**CENTRAL DIVISION**

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**MATTHEW CLINE,**

**Plaintiff,**

v.

**CHASE MANHATTAN BANK USA,  
NATIONAL ASSOCIATION,**

**Defendant.**

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**CHASE MANHATTAN BANK USA,  
NATIONAL ASSOCIATION,**

**Counterclaimant,**

v.

**MATTHEW CLINE,**

**Counter-Defendant.**

**ORDER REGARDING ATTORNEY  
FEES**

**Case No. 2:07CV650 DAK**

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On October 15, 2008, Chase Manhattan Bank USA, National Association filed a Motion for Attorney Fees. Plaintiff /Counter Defendant Matthew Cline has not responded to the Motion, and the time for doing so has long-since expired.

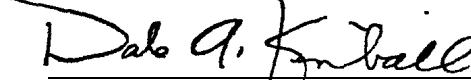
The Cardmember Agreement that the court has previously ruled governs the subject account states: “To the extent permitted by law, if you are in default because you have failed to pay us, you will pay our collection costs, attorneys’ fees, court costs, and all other

expenses of enforcing our rights under this agreement.” Cardmember Agreement at 3. The court has carefully considered the motion, memorandum, and supporting affidavit filed by Chase Manhattan Bank, and find its request for \$15, 714.80 to be reasonable.

Accordingly, Chase Manhattan Bank’s Motion for Attorney Fees [docket # 50] is GRANTED, and it is hereby awarded attorney fees in the amount of \$15,714.80.

DATED this 14<sup>th</sup> day of January, 2009.

BY THE COURT:

A handwritten signature in black ink, reading "Dale A. Kimball", written over a horizontal line.

DALE A. KIMBALL

United States District Judge

MICHAEL J. MALMQUIST (5310)  
Parsons Behle & Latimer  
Attorneys for Cedar City, Utah  
One Utah Center  
201 South Main Street, Suite 1800  
Salt Lake City, UT 84111  
Telephone: (801) 532-1234  
Facsimile: (801) 536-6111

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IN THE UNITED STATES DISTRICT COURT  
DISTRICT OF UTAH, CENTRAL DIVISION

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WILDEARTH GUARDIANS, *et. al*,

Plaintiffs,

vs.

UNITED STATES FISH AND WILDLIFE  
SERVICE,

Defendant.

Case No. 2:07-CV-00837-CW

ORDER GRANTING MOTION FOR  
LEAVE TO FILE MEMORANDUM OF  
AMICUS CURIAE OF CEDAR CITY,  
UTAH IN SUPPORT OF DEFENDANT

Judge Clark Waddoups

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The Court having received and reviewed Cedar City, Utah's Motion for Leave to Memorandum of Amicus Brief, and good cause appearing therefore, hereby grants Cedar City, Utah leave to file its Memorandum of Amicus Curiae in Support of Defendant.

ORDERED this 14<sup>th</sup> day of January, 2009.

BY THE COURT:



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CLARK WADDOUPS  
United States District Judge

John P. Ashton (0134) [jashton@vancott.com](mailto:jashton@vancott.com)  
Thomas R. Barton (6827) [tbarton@vancott.com](mailto:tbarton@vancott.com)  
Cassie J. Medura (8290) [cmedura@vancott.com](mailto:cmedura@vancott.com)  
VANCOTT BAGLEY CORNWALL & MCCARTHY  
36 South State Street, Suite 1900  
Salt Lake City, Utah 84111-1478  
Telephone: (801) 532-3333  
Facsimile: (801) 534-0058

Attorneys for Plaintiff

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IN THE UNITED STATES DISTRICT COURT OF UTAH  
CENTRAL DIVISION

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MARGAE, INC.,

Plaintiff,

vs.

CLEAR LINK TECHNOLOGIES, LLC,  
JAMES CLARKE, ALAN S. EARL, PHIL  
HANSEN. BRUCE WESTENSKOW and  
BEN HENDERSON,

Defendants.

ORDER OF DISMISSAL OF  
PLAINTIFF'S CLAIM UNDER THE  
UTAH UNIFORM TRADE SECRETS  
ACT

Case No. 07cv00916 CW

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Based on the parties Stipulation and Joint Motion for Dismissal of Plaintiff's Claim  
under the Utah Uniform Trade Secrets Act and for good cause appearing therefore, the  
Court enters the following:

\\

\\

\\

Plaintiff's Fourth Claim in the First Amended Complaint under the Utah Uniform Trade Secrets Act is hereby dismissed with prejudice, each party to bear its own fees and costs.

SO ORDERED this 14<sup>th</sup> day of January, 2009.

BY THE COURT:

A handwritten signature in black ink, reading "Clark Waddoups", written over a light blue horizontal line.

Clark Waddoups  
United States District Judge

United States District Court  
for the  
District of Utah

FILED  
U.S. DISTRICT COURT

**Request and Order to Amend Conditions of Pretrial Release**

Name of Defendant: **Arthur Kostanyan**

2009 JAN 13 P 2:29  
Docket Number: **2:08-CR-106-003-TC**

Name of Judicial Officer: **Honorable Samuel Alba, Chief United States Magistrate Judge**

Date of Release: **February 13, 2008**

BY: \_\_\_\_\_  
DEPUTY CLERK

---

**PETITIONING THE COURT**

☒ [ X ] To amend the conditions of pretrial release as follows:


Travel is restricted to the Districts of Utah and California; travel to Utah for purposes of court appearances only. Any other travel is to be approved by Pretrial Services.

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**CAUSE**

The defendant initially released to reside in the District of California. The defendant then requested new residence in Las Vegas, Nevada, and transfer was granted. The defendant is now requesting to relocate to California to pursue an employment opportunity.

I declare under penalty of perjury that the foregoing is true and correct



**Blanca Tillman, United States Pretrial Services Officer**

Date: January 12, 2009

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**THE COURT ORDERS:**

☒ [ X ] That the conditions of pretrial release be amended as outlined above.

☐ [ ] No action

☐ [ ] Other



**Honorable Samuel Alba, Chief United States Magistrate Judge**

Date: 1/13/08

UNITED STATES DISTRICT COURT U.S. DISTRICT COURT

Central

District of

Utah  
2009 JAN 14 P 1:08

UNITED STATES OF AMERICA

JUDGMENT IN A CRIMINAL CASE

V.

DISTRICT OF UTAH

Michael Ray Ellis

Case Number: DUTX 2:08-cr-00154-001

USM Number: 15394-081

Mary C. Corporon

Defendant's Attorney

THE DEFENDANT:

☒ pleaded guilty to count(s) I-Indictment

☐ pleaded nolo contendere to count(s)  
which was accepted by the court.

☐ was found guilty on count(s)  
after a plea of not guilty.

The defendant is adjudicated guilty of these offenses:

Title & Section	Nature of Offense	Offense Ended	Count
18USC§922(g)(1)	Felon in Possession of a Firearm		1

The defendant is sentenced as provided in pages 2 through 10 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

☐ The defendant has been found not guilty on count(s)

☒ Count(s) II-Indictment ☒ is ☐ are dismissed on the motion of the United States.

It is ordered that the defendant must notify the United States attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid. If ordered to pay restitution, the defendant must notify the court and United States attorney of material changes in economic circumstances.

1/13/2009

Date of Imposition of Judgment

Dee Benson

Signature of Judge

Dee Benson

Name of Judge

U.S. District Judge

Title of Judge

1/14/2009

Date

DEFENDANT: Michael Ray Ellis  
CASE NUMBER: DUTX 2:08-cr-00154-001

## IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a total term of:

71 months.

☒ The court makes the following recommendations to the Bureau of Prisons:

The Court recommends a Federal Correctional Institution where the defendant can participate and complete the 500 hour drug re-hab program.

☒ The defendant is remanded to the custody of the United States Marshal.

☐ The defendant shall surrender to the United States Marshal for this district:

☐ at \_\_\_\_\_ ☐ a.m. ☐ p.m. on \_\_\_\_\_  
☐ as notified by the United States Marshal.

☐ The defendant shall surrender for service of sentence at the institution designated by the Bureau of Prisons:

☐ before 2 p.m. on \_\_\_\_\_  
☐ as notified by the United States Marshal.  
☐ as notified by the Probation or Pretrial Services Office.

## RETURN

I have executed this judgment as follows:

Defendant delivered on \_\_\_\_\_ to \_\_\_\_\_  
at \_\_\_\_\_, with a certified copy of this judgment.

\_\_\_\_\_  
UNITED STATES MARSHAL

By \_\_\_\_\_  
DEPUTY UNITED STATES MARSHAL

DEFENDANT: Michael Ray Ellis  
CASE NUMBER: DUTX 2:08-cr-00154-001

### SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be on supervised release for a term of :  
  
36 months.

The defendant must report to the probation office in the district to which the defendant is released within 72 hours of release from the custody of the Bureau of Prisons.

The defendant shall not commit another federal, state or local crime.

The defendant shall not unlawfully possess a controlled substance. The defendant shall refrain from any unlawful use of a controlled substance. The defendant shall submit to one drug test within 15 days of release from imprisonment and at least two periodic drug tests thereafter, as determined by the court.

- ☐ The above drug testing condition is suspended, based on the court's determination that the defendant poses a low risk of future substance abuse. (Check, if applicable.)
- ☒ The defendant shall not possess a firearm, ammunition, destructive device, or any other dangerous weapon. (Check, if applicable.)
- ☒ The defendant shall cooperate in the collection of DNA as directed by the probation officer. (Check, if applicable.)
- ☐ The defendant shall register with the state sex offender registration agency in the state where the defendant resides, works, or is a student, as directed by the probation officer. (Check, if applicable.)
- ☐ The defendant shall participate in an approved program for domestic violence. (Check, if applicable.)

If this judgment imposes a fine or restitution, it is a condition of supervised release that the defendant pay in accordance with the Schedule of Payments sheet of this judgment.

The defendant must comply with the standard conditions that have been adopted by this court as well as with any additional conditions on the attached page.

### STANDARD CONDITIONS OF SUPERVISION

- 1) the defendant shall not leave the judicial district without the permission of the court or probation officer;
- 2) the defendant shall report to the probation officer and shall submit a truthful and complete written report within the first five days of each month;
- 3) the defendant shall answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer;
- 4) the defendant shall support his or her dependents and meet other family responsibilities;
- 5) the defendant shall work regularly at a lawful occupation, unless excused by the probation officer for schooling, training, or other acceptable reasons;
- 6) the defendant shall notify the probation officer at least ten days prior to any change in residence or employment;
- 7) the defendant shall refrain from excessive use of alcohol and shall not purchase, possess, use, distribute, or administer any controlled substance or any paraphernalia related to any controlled substances, except as prescribed by a physician;
- 8) the defendant shall not frequent places where controlled substances are illegally sold, used, distributed, or administered;
- 9) the defendant shall not associate with any persons engaged in criminal activity and shall not associate with any person convicted of a felony, unless granted permission to do so by the probation officer;
- 10) the defendant shall permit a probation officer to visit him or her at any time at home or elsewhere and shall permit confiscation of any contraband observed in plain view of the probation officer;
- 11) the defendant shall notify the probation officer within seventy-two hours of being arrested or questioned by a law enforcement officer;
- 12) the defendant shall not enter into any agreement to act as an informer or a special agent of a law enforcement agency without the permission of the court; and
- 13) as directed by the probation officer, the defendant shall notify third parties of risks that may be occasioned by the defendant's criminal record or personal history or characteristics and shall permit the probation officer to make such notifications and to confirm the defendant's compliance with such notification requirement.

DEFENDANT: Michael Ray Ellis  
CASE NUMBER: DUTX 2:08-cr-00154-001

### **SPECIAL CONDITIONS OF SUPERVISION**

1. The defendant shall maintain full-time, verifiable employment or participate in educational, academic, or vocational development throughout the term of supervised release, as deemed appropriate by the United States Probation Office.
2. The defendant shall submit to drug/alcohol testing as directed by the probation office, and pay a one-time \$115.00 fee to partially defray the costs of collection and testing.
3. If testing reveals illegal drug use excessive and/or illegal consumption of alcohol such as alcohol-related criminal or traffic offenses, the defendant shall participate in drug and/or alcohol abuse treatment under a co-payment plan as directed by the probation office and shall not possess or consume alcohol during the course of treatment, nor frequent businesses where alcohol is the chief item of order.
4. The defendant shall submit his person, residence, office, or vehicle to a search, conducted by the United States Probation Office at a reasonable time and in a reasonable manner, based upon reasonable suspicion of contraband or evidence of a violation of a condition of release; failure to submit to a search may be grounds for revocation; the defendant shall warn any other residents that the premises may be subject to searches pursuant to this condition.

DEFENDANT: Michael Ray Ellis  
CASE NUMBER: DUTX 2:08-cr-00154-001

### CRIMINAL MONETARY PENALTIES

The defendant must pay the total criminal monetary penalties under the schedule of payments on Sheet 6.

	<u>Assessment</u>	<u>Fine</u>	<u>Restitution</u>
TOTALS	\$ 100.00	\$	\$

☐ The determination of restitution is deferred until \_\_\_\_\_. An *Amended Judgment in a Criminal Case* (AO 245C) will be entered after such determination.

☐ The defendant must make restitution (including community restitution) to the following payees in the amount listed below.

If the defendant makes a partial payment, each payee shall receive an approximately proportioned payment, unless specified otherwise in the priority order or percentage payment column below. However, pursuant to 18 U.S.C. § 3664(i), all nonfederal victims must be paid before the United States is paid.

<u>Name of Payee</u>	<u>Total Loss*</u>	<u>Restitution Ordered</u>	<u>Priority or Percentage</u>
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TOTALS	\$ <u>0.00</u>	\$ <u>0.00</u>
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☐ Restitution amount ordered pursuant to plea agreement \$ \_\_\_\_\_

☐ The defendant must pay interest on restitution and a fine of more than \$2,500, unless the restitution or fine is paid in full before the fifteenth day after the date of the judgment, pursuant to 18 U.S.C. § 3612(f). All of the payment options on Sheet 6 may be subject to penalties for delinquency and default, pursuant to 18 U.S.C. § 3612(g).

☐ The court determined that the defendant does not have the ability to pay interest and it is ordered that:

☐ the interest requirement is waived for the ☐ fine ☐ restitution.

☐ the interest requirement for the ☐ fine ☐ restitution is modified as follows:

\* Findings for the total amount of losses are required under Chapters 109A, 110, 110A, and 113A of Title 18 for offenses committed on or after September 13, 1994, but before April 23, 1996.

DEFENDANT: Michael Ray Ellis  
CASE NUMBER: DUTX 2:08-cr-00154-001

### SCHEDULE OF PAYMENTS

Having assessed the defendant's ability to pay, payment of the total criminal monetary penalties are due as follows:

- A ☒ Lump sum payment of \$ 100.00 due immediately, balance due
- ☐ not later than \_\_\_\_\_, or  
☐ in accordance ☐ C, ☐ D, ☐ E, or ☐ F below; or
- B ☐ Payment to begin immediately (may be combined with ☐ C, ☐ D, or ☐ F below); or
- C ☐ Payment in equal \_\_\_\_\_ (e.g., weekly, monthly, quarterly) installments of \$ \_\_\_\_\_ over a period of \_\_\_\_\_ (e.g., months or years), to commence \_\_\_\_\_ (e.g., 30 or 60 days) after the date of this judgment; or
- D ☐ Payment in equal \_\_\_\_\_ (e.g., weekly, monthly, quarterly) installments of \$ \_\_\_\_\_ over a period of \_\_\_\_\_ (e.g., months or years), to commence \_\_\_\_\_ (e.g., 30 or 60 days) after release from imprisonment to a term of supervision; or
- E ☐ Payment during the term of supervised release will commence within \_\_\_\_\_ (e.g., 30 or 60 days) after release from imprisonment. The court will set the payment plan based on an assessment of the defendant's ability to pay at that time; or
- F ☐ Special instructions regarding the payment of criminal monetary penalties:

Unless the court has expressly ordered otherwise, if this judgment imposes imprisonment, payment of criminal monetary penalties is due during imprisonment. All criminal monetary penalties, except those payments made through the Federal Bureau of Prisons' Inmate Financial Responsibility Program, are made to the clerk of the court.

The defendant shall receive credit for all payments previously made toward any criminal monetary penalties imposed.

☐ Joint and Several

Defendant and Co-Defendant Names and Case Numbers (including defendant number), Total Amount, Joint and Several Amount, and corresponding payee, if appropriate.

- ☐ The defendant shall pay the cost of prosecution.
- ☐ The defendant shall pay the following court cost(s):
- ☐ The defendant shall forfeit the defendant's interest in the following property to the United States:

Payments shall be applied in the following order: (1) assessment, (2) restitution principal, (3) restitution interest, (4) fine principal, (5) fine interest, (6) community restitution, (7) penalties, and (8) costs, including cost of prosecution and court costs.

Pages \_\_\_\_ - \_\_\_\_  
are the  
Statement of Reasons,  
which will be docketed  
separately as a sealed  
document

FILED  
U.S. DISTRICT COURT

RECEIVED

2009 JAN 14 A 10:04

IN THE UNITED STATES DISTRICT COURT

DISTRICT OF UTAH

DISTRICT OF UTAH, CENTRAL DIVISION

CLERK OF  
JUDGE TENA CAMPBELL

BY:

UNITED STATES OF AMERICA,

Plaintiff,

v.

ROBERT LARSON,  
Defendant.

**ORDER TO CONTINUE  
JURY TRIAL**

Case No. 2:08 CR-403 TC

Based on the motion to continue trial filed by defendant in the above-entitled case, and good cause appearing,

It is hereby ORDERED that the trial previously scheduled for January 12, 2009, is hereby continued to the 16 day of March, 2009, at 8 A.m. Pursuant to 18 U.S.C. § 3161(h), the Court finds the ends of justice served by such a continuance outweigh the best interests of the public and the defendant in a speedy trial. Accordingly, the time between the date of this order and the new trial date is excluded from speedy trial computation.

Dated this 12 day of Jan, 2009.

BY THE COURT:

Tena Campbell  
HONORABLE TENA CAMPBELL  
United States District Court Judge

STEVEN B. KILLPACK, Federal Defender (#1808)  
L. CLARK DONALDSON, Assistant Federal Defender (#4822)  
**UTAH FEDERAL DEFENDER OFFICE**  
Attorneys for Mr. Reese  
46 West Broadway, Suite 110  
Salt Lake City, Utah 84101  
Telephone: (801) 524-4010  
Facsimile: (801) 524-4060

FILED  
U.S. DISTRICT COURT

2009 JAN 14 A 10:38

DISTRICT OF UTAH

BY:                       
DEPUTY CLERK

**IN THE UNITED STATES DISTRICT COURT**

**DISTRICT OF UTAH, CENTRAL DIVISION**

UNITED STATES OF AMERICA,

Plaintiff,

v.

KENNETH L. REESE,

Defendant.

**ORDER TO CONTINUE JURY TRIAL**

Case No. 2:08-CR-405 DB

Based on motion of the defendant, stipulation of the government, and good cause appearing therefore,

IT IS HEREBY ORDERED that the trial previously scheduled for January 5, 2009 is continued to 9 day of MARCH, 2009 at 8:30 AM. Pursuant to 18 U.S.C. § 3161(h)(8)(B)(i), the court finds the ends of justice served by such a continuance outweigh the best interests of the public and the defendant to a speedy trial. More specifically, the parties need time to arrive at a potential factual stipulation to avoid the presentation of complicated forensic testimony regarding computers and electronic data and to avoid the possible trauma to child witnesses of testifying in open court, to otherwise prepare for trial and to fully explore a potential

resolution of the case, the defense needs additional time to effectively prepare for trial pursuant to 18 U.S.C. § 3161(h)(8)(B)(iv). The time of the delay shall be excluded under the Speedy Trial Act.

Dated this 14 day of ~~December~~ 2008.  
January 2009.

BY THE COURT:

  
HONORABLE DEE V. BENSON  
United States District Court Judge

FILED  
U.S. DISTRICT COURT IN THE UNITED STATES DISTRICT COURT

2009 JAN 14 A 11: DISTRICT OF UTAH, CENTRAL DIVISION

RECEIVED  
JAN 09 2009

OFFICE OF JUDGE  
THOMAS GREENE

UNITED STATES OF AMERICA,

Plaintiff,

vs.

GENE PERRY SHELLEY,

Defendant.

Case No.: 2:08 - cr - 00461 - JTG

ORDER TO CONTINUE AND TO  
EXCLUDE TIME PURSUANT TO  
SPEEDY TRIAL ACT

Judge Thomas Greene

On the motion of the United States, and good cause appearing, the Court issues the following Order.

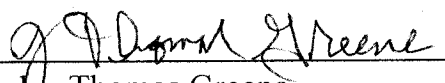
The hearing in this matter, which was previously scheduled for January 12, 2009, is continued to January 20, 2009, at 1:30 PM..

The Court excludes from Speedy Trial Act computation all time from the date of this Order through the date of the new trial because of the ongoing plea negotiations between the parties, and because the interests of justice are best served by a continuance of the current trial date.

IT IS SO ORDERED.

DATED this 13<sup>th</sup> day of January, 2009.

BY THE COURT:

  
Judge Thomas Greene  
United States District Judge

WALTER F. BUGDEN, JR. (480)  
BUGDEN & ISAACSON, L.L.C.  
445 East 200 South, Suite 150  
Salt Lake City, UT 84111  
Telephone: (801) 467-1700  
Facsimile: (801) 746-8600

Attorneys for Defendant

IN THE UNITED STATES DISTRICT COURT  
DISTRICT OF UTAH, CENTRAL DIVISION

---

UNITED STATES OF AMERICA,

Plaintiff,

vs.

JEFFREY LYLE NAY,

Defendant.

ORDER OF HOME  
CONFINEMENT RELEASE

Case No. 2:08-cr-00467

Judge Clark Waddoups

---

BASED upon the Motion and Stipulation of counsel, and all circumstances in this case, it is hereby

ORDERED that the condition of home confinement is hereby stricken. All other conditions of release, including the Defendant's \$20,000 cash bail shall remain in full force and effect until the Defendant's self-surrender on March 9, 2009.

DATED this 14<sup>th</sup> day of January, 2009.

BY THE COURT:



HON. CLARK WADDOUPS

FILED  
U.S. DISTRICT COURT  
2009 JAN 14 PM 4:28  
DISTRICT OF COLUMBIA  
UNITED STATES DISTRICT COURT

CENTRAL

District of Columbia

UTAH

UNITED STATES OF AMERICA

V.

Jeffery Lyle Nay

JUDGMENT IN A CRIMINAL CASE

BY:

Case Number: DUTX 2:08CR000467-002 CW

USM Number: 15548-081

Walter F. Bugden, Jr.

Defendant's Attorney

THE DEFENDANT:

☒ pleaded guilty to count(s) 1 of the Indictment

☐ pleaded nolo contendere to count(s) \_\_\_\_\_  
which was accepted by the court.

☐ was found guilty on count(s) \_\_\_\_\_  
after a plea of not guilty.

The defendant is adjudicated guilty of these offenses:

Title & Section	Nature of Offense	Offense Ended	Count
18 USC § 2113(a)&(d)	Armed Bank Robbery		1

The defendant is sentenced as provided in pages 2 through 7 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

☐ The defendant has been found not guilty on count(s) \_\_\_\_\_

☐ Count(s) \_\_\_\_\_ ☐ is ☐ are dismissed on the motion of the United States.

It is ordered that the defendant must notify the United States attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid. If ordered to pay restitution, the defendant must notify the court and United States attorney of material changes in economic circumstances.

1/12/2009

Date of Imposition of Judgment



Signature of Judge

Clark Waddoups

Name of Judge

U.S. District Judge

Title of Judge

Date

1/14/09

DEFENDANT: Jeffery Lyle Nay  
CASE NUMBER: DUTX 2:08CR000467-002

## IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a total term of:

30 months

☒ The court makes the following recommendations to the Bureau of Prisons:

The Court recommends the dft be incarcerated in a facility with as low a security designation as deemed appropriate. Dft is to participate in mental health counseling.

☐ The defendant is remanded to the custody of the United States Marshal.

☐ The defendant shall surrender to the United States Marshal for this district:

☒ at 12:00 ☐ a.m. ☒ p.m. on 3/9/2009

☐ as notified by the United States Marshal.

☒ The defendant shall surrender for service of sentence at the institution designated by the Bureau of Prisons:

☐ before 2 p.m. on \_\_\_\_\_

☐ as notified by the United States Marshal.

☒ as notified by the Probation or Pretrial Services Office.

## RETURN

I have executed this judgment as follows:

Defendant delivered on \_\_\_\_\_ to \_\_\_\_\_  
at \_\_\_\_\_, with a certified copy of this judgment.

UNITED STATES MARSHAL

By \_\_\_\_\_  
DEPUTY UNITED STATES MARSHAL

DEFENDANT: Jeffery Lyle Nay  
CASE NUMBER: DUTX 2:08CR000467-002

### SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be on supervised release for a term of :

36 months

The defendant must report to the probation office in the district to which the defendant is released within 72 hours of release from the custody of the Bureau of Prisons.

The defendant shall not commit another federal, state or local crime.

The defendant shall not unlawfully possess a controlled substance. The defendant shall refrain from any unlawful use of a controlled substance. The defendant shall submit to one drug test within 15 days of release from imprisonment and at least two periodic drug tests thereafter, as determined by the court.

- ☐ The above drug testing condition is suspended, based on the court's determination that the defendant poses a low risk of future substance abuse. (Check, if applicable.)
- ☒ The defendant shall not possess a firearm, ammunition, destructive device, or any other dangerous weapon. (Check, if applicable.)
- ☒ The defendant shall cooperate in the collection of DNA as directed by the probation officer. (Check, if applicable.)
- ☐ The defendant shall register with the state sex offender registration agency in the state where the defendant resides, works, or is a student, as directed by the probation officer. (Check, if applicable.)
- ☐ The defendant shall participate in an approved program for domestic violence. (Check, if applicable.)

If this judgment imposes a fine or restitution, it is a condition of supervised release that the defendant pay in accordance with the Schedule of Payments sheet of this judgment.

The defendant must comply with the standard conditions that have been adopted by this court as well as with any additional conditions on the attached page.

### STANDARD CONDITIONS OF SUPERVISION

- 1) the defendant shall not leave the judicial district without the permission of the court or probation officer;
- 2) the defendant shall report to the probation officer and shall submit a truthful and complete written report within the first five days of each month;
- 3) the defendant shall answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer;
- 4) the defendant shall support his or her dependents and meet other family responsibilities;
- 5) the defendant shall work regularly at a lawful occupation, unless excused by the probation officer for schooling, training, or other acceptable reasons;
- 6) the defendant shall notify the probation officer at least ten days prior to any change in residence or employment;
- 7) the defendant shall refrain from excessive use of alcohol and shall not purchase, possess, use, distribute, or administer any controlled substance or any paraphernalia related to any controlled substances, except as prescribed by a physician;
- 8) the defendant shall not frequent places where controlled substances are illegally sold, used, distributed, or administered;
- 9) the defendant shall not associate with any persons engaged in criminal activity and shall not associate with any person convicted of a felony, unless granted permission to do so by the probation officer;
- 10) the defendant shall permit a probation officer to visit him or her at any time at home or elsewhere and shall permit confiscation of any contraband observed in plain view of the probation officer;
- 11) the defendant shall notify the probation officer within seventy-two hours of being arrested or questioned by a law enforcement officer;
- 12) the defendant shall not enter into any agreement to act as an informer or a special agent of a law enforcement agency without the permission of the court; and
- 13) as directed by the probation officer, the defendant shall notify third parties of risks that may be occasioned by the defendant's criminal record or personal history or characteristics and shall permit the probation officer to make such notifications and to confirm the defendant's compliance with such notification requirement.

DEFENDANT: Jeffery Lyle Nay  
CASE NUMBER: DUTX 2:08CR000467-002

### **SPECIAL CONDITIONS OF SUPERVISION**

- 1) The defendant shall participate in a mental health treatment program under a copayment plan as directed by the probation office, take any mental health medications as prescribed, and not possess or consume alcohol, nor frequent businesses where alcohol is the primary item of order, during the course of treatment or medication.
- 2) The defendant shall refrain from incurring new credit charges or opening additional lines of credit unless he is in compliance with any established payment schedule and obtains the approval of the probation office.
- 3) The defendant shall provide the probation office access to all requested financial information.

DEFENDANT: Jeffery Lyle Nay  
CASE NUMBER: DUTX 2:08CR000467-002

### CRIMINAL MONETARY PENALTIES

The defendant must pay the total criminal monetary penalties under the schedule of payments on Sheet 6.

	<u>Assessment</u>	<u>Fine</u>	<u>Restitution</u>
TOTALS	\$ 100.00	\$	\$ 51,800.00

☐ The determination of restitution is deferred until \_\_\_\_\_. An *Amended Judgment in a Criminal Case* (AO 245C) will be entered after such determination.

☒ The defendant must make restitution (including community restitution) to the following payees in the amount listed below.

If the defendant makes a partial payment, each payee shall receive an approximately proportioned payment, unless specified otherwise in the priority order or percentage payment column below. However, pursuant to 18 U.S.C. § 3664(i), all nonfederal victims must be paid before the United States is paid.

<u>Name of Payee</u>	<u>Total Loss*</u>	<u>Restitution Ordered</u>	<u>Priority or Percentage</u>
----------------------	--------------------	----------------------------	-------------------------------

Goldenwest Credit Union		\$51,800.00	
-------------------------	--	-------------	--

3664 West 10400 South			
-----------------------	--	--	--

South Jordan, Utah 84095			
--------------------------	--	--	--

TOTALS	\$ _____	0.00	\$ _____	51,800.00
--------	----------	------	----------	-----------

☐ Restitution amount ordered pursuant to plea agreement \$ \_\_\_\_\_

☐ The defendant must pay interest on restitution and a fine of more than \$2,500, unless the restitution or fine is paid in full before the fifteenth day after the date of the judgment, pursuant to 18 U.S.C. § 3612(f). All of the payment options on Sheet 6 may be subject to penalties for delinquency and default, pursuant to 18 U.S.C. § 3612(g).

☒ The court determined that the defendant does not have the ability to pay interest and it is ordered that:

☒ the interest requirement is waived for the ☐ fine ☒ restitution.

☐ the interest requirement for the ☐ fine ☐ restitution is modified as follows:

\* Findings for the total amount of losses are required under Chapters 109A, 110, 110A, and 113A of Title 18 for offenses committed on or after September 13, 1994, but before April 23, 1996.

DEFENDANT: Jeffery Lyle Nay  
CASE NUMBER: DUTX 2:08CR000467-002

## SCHEDULE OF PAYMENTS

Having assessed the defendant's ability to pay, payment of the total criminal monetary penalties are due as follows:

- A ☒ Lump sum payment of \$ 51,900.00 due immediately, balance due
- ☐ not later than \_\_\_\_\_, or  
☐ in accordance ☐ C, ☐ D, ☐ E, or ☐ F below; or
- B ☐ Payment to begin immediately (may be combined with ☐ C, ☐ D, or ☐ F below); or
- C ☐ Payment in equal \_\_\_\_\_ (e.g., weekly, monthly, quarterly) installments of \$ \_\_\_\_\_ over a period of \_\_\_\_\_ (e.g., months or years), to commence \_\_\_\_\_ (e.g., 30 or 60 days) after the date of this judgment; or
- D ☐ Payment in equal \_\_\_\_\_ (e.g., weekly, monthly, quarterly) installments of \$ \_\_\_\_\_ over a period of \_\_\_\_\_ (e.g., months or years), to commence \_\_\_\_\_ (e.g., 30 or 60 days) after release from imprisonment to a term of supervision; or
- E ☐ Payment during the term of supervised release will commence within \_\_\_\_\_ (e.g., 30 or 60 days) after release from imprisonment. The court will set the payment plan based on an assessment of the defendant's ability to pay at that time; or
- F ☒ Special instructions regarding the payment of criminal monetary penalties:  
SPA of \$100 is due and payable forthwith. Restitution in the amount of \$51,800 shall be paid in accordance with a schedule established by the Bureau of Prisons Inmate Financial Responsibility Program while incarcerated. Upon release from imprisonment payments will be made at a minimum rate of \$200 per months as directed by the U.S. Probation Office.

Unless the court has expressly ordered otherwise, if this judgment imposes imprisonment, payment of criminal monetary penalties is due during imprisonment. All criminal monetary penalties, except those payments made through the Federal Bureau of Prisons' Inmate Financial Responsibility Program, are made to the clerk of the court.

The defendant shall receive credit for all payments previously made toward any criminal monetary penalties imposed.

☐ Joint and Several

Defendant and Co-Defendant Names and Case Numbers (including defendant number), Total Amount, Joint and Several Amount, and corresponding payee, if appropriate.

- ☐ The defendant shall pay the cost of prosecution.
- ☐ The defendant shall pay the following court cost(s):
- ☐ The defendant shall forfeit the defendant's interest in the following property to the United States:

Payments shall be applied in the following order: (1) assessment, (2) restitution principal, (3) restitution interest, (4) fine principal, (5) fine interest, (6) community restitution, (7) penalties, and (8) costs, including cost of prosecution and court costs.

FILED  
U.S. DISTRICT COURT  
**RECEIVED**

2009 JAN 14 A 11:28  
IN THE UNITED STATES DISTRICT COURT  
DISTRICT OF UTAH, CENTRAL DIVISION

BY: le  
DEPUTY CLERK  
OFFICE OF JUDGE  
J. THOMAS GREENE

UNITED STATES OF AMERICA,

Plaintiff,

vs.

RALPH MILLIGAN SIVERTSON,

Defendant.

Case #: 2:08CR00630-JTG

PRELIMINARY ORDER OF  
FORFEITURE

JUDGE: J. THOMAS GREENE

IT IS HEREBY ORDERED that:

1. As a result of a plea of guilty to Count II of the Indictment for which the government sought forfeiture pursuant to 18 U.S.C. § 924(d), the defendant Ralph Milligan Sivertson shall forfeit to the United States all property, real or personal, that is derived from, used, or intended to be used in violation of 18 U.S.C. § 922(g)(1), including but not limited to:

- Ruger 10-22 Rifle, Serial Number: 25353872
- Ruger 10-22 Rifle, Serial Number: 25362645
- Remington 870 Shotgun, Serial Number: B221145M
- Olympic Arms Rifle, Serial Number: PCRBT6633
- Hi-Point JHP .45 Handgun, Serial Number: 428607
- Jennings .380 Handgun, Serial Number: 1426323
- FEG PJK-9HP Handgun, Serial Number: B95906
- Associated Ammunition Consisting of:

75 Twelve Gauge Shotgun Shells

50 Rounds of .38 Special Ammunition

100 Rounds of .45 Auto Ammunition

8 Boxes of .22 Caliber Ammunition

2. The Court has determined that based on a guilty plea of possession of firearms and ammunition by a convicted felon, that the defendant had an interest in the property and that the government has established the requisite nexus between such property and such offense.

3. Upon entry of this Order the Attorney General, or its designee is authorized to seize and conduct any discovery proper in identifying, locating, or disposing of the property subject to forfeiture, in accordance with Fed. R. Crim. P. 32.2(b)(3).

4. Upon entry of this Order the Attorney General or its designee is authorized to commence any applicable proceeding to comply with statutes governing third party interests, including giving notice of this Order.

5. The United States shall publish notice of this Order on its intent to dispose of the property in such a manner as the Attorney General may direct. The United States may also, to the extent practicable, provide written notice to any person known to have an alleged interest in the subject property.

6. Any person, other than the above named defendant, asserting a legal interest in the subject property may, within thirty days of the final publication of notice or receipt of notice, whichever is earlier, petition the Court for a hearing without a jury to adjudicate the validity of his alleged interest in the subject property, and amendment of the order of forfeiture pursuant to 21 U.S.C. § 853.

7. Pursuant to Fed. R. Crim. P. 32.2(b)(3), this Preliminary Order of Forfeiture shall

become final as to the defendant at the time of sentencing and shall be made part of the sentence and included in the judgment.

8. Any petition filed by a third party asserting an interest in the subject property shall be signed by the petitioner under penalty of perjury and shall set forth the nature and extent of the petitioner's acquisition of the right, title, or interest in the subject property, any additional facts supporting the petitioners claim and relief sought.

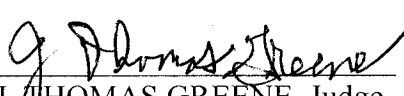
9. After the disposition of any motion filed under Fed. R. Crim. P. 32.2(c)(1)(A) and before a hearing on the petition, discovery may be conducted in accordance with the Federal Rules of Criminal Procedure upon a showing that such discovery is necessary or desirable to resolve factual issues.

10. The United States shall have clear title to the subject property following the Court's disposition of all third party interests, or, if none, following the expiration of the period provided in 21 U.S.C. 853 which is incorporated by 18 U.S.C. § 982(b) for the filing of third party petitions.

11. The Court shall retain jurisdiction to enforce this Order, and to amend it as necessary, pursuant to Fed. R. Crim. P. 32.2(e).

DATED this 13<sup>th</sup> day of January, 2009.

BY THE COURT:

  
J. THOMAS GREENE, Judge  
United States District Court

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF UTAH**

**UNITED STATES OF AMERICA****Plaintiff,****David Lynn Stevenson****Defendant**

FILED  
U.S. DISTRICT COURT

Docket No.: 2:08-CR-751-001-TC

DISTRICT OF UTAH

BY: \_\_\_\_\_  
DEPUTY CLERK

**CONSENT TO MODIFY CONDITIONS OF RELEASE**

I, David Lynn Stevenson, have discussed with Pretrial Services Officer Annie Carr, modification of my release conditions as follows:

- Continue current mental health counseling and participate in additional mental health counseling as deemed advisable by the supervising officer.
- Allow defendant to not obtain employment if recommended by his current doctor.

I consent to this modification of my release conditions and agree to abide by this modification.

David Lynn Stevenson  
Defendant

Annie Carr  
Pretrial Services Officer

23 December 2008  
Date

12/23/08  
Date

I have reviewed the conditions with my client and concur that this modification is appropriate.

\_\_\_\_\_  
Defense Counsel

\_\_\_\_\_  
Date

**ORDER OF THE COURT**

☒ The above modification of conditions of release is ordered, to be effective on 23 Dec, 2008.

☐ The above modification of conditions of release is not ordered.

Paul M. Warner  
Honorable Paul M. Warner  
United States Magistrate Judge

13 January 2009  
Date

FILED  
U.S. DISTRICT COURT

2009 JAN 14 A 8:20

IN THE UNITED STATES DISTRICT COURT

DISTRICT OF UTAH, CENTRAL DIVISION

DISTRICT OF UTAH

BY: DEPUTY CLERK

UNITED STATES OF AMERICA,

Plaintiff,

v.

JAMES WILLIAM BROADHEAD,

Defendant.

**ORDER FOR EXTENSION OF TIME  
FOR FILING MOTIONS**

Case No. 2:08CR-781 CW

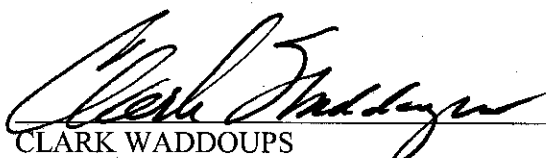
Based on the motion filed by the defendant and good cause appearing,

IT IS HEREBY ORDERED that an extension of time for filing motions is granted.

Further, the motion cutoff date is extended from January 12, 2009 to 2/5/09,  
2009.

DATED this 13<sup>th</sup> day of January, 2009.

BY THE COURT:

  
CLARK WADDOUPS  
United States District Court Judge

BRENT L. TOLMAN, United States Attorney (#3389)  
DAVID R. GROENDYK, Special Assistant United States Attorney (WY# 6-4228)  
Attorneys for the United States of America  
Ogden Air Logistics Center / Staff Judge Advocate  
6026 Cedar Lane , Bldg 1278  
Hill Air Force Base, Utah 84056-5812  
Telephone: (801) 777-6626  
Facsimile: (801) 777-5915

RECEIVED CLERK  
JAN 13 2009  
U.S. DISTRICT COURT

FILED  
JAN 13 2009  
BY: [Signature]

IN THE UNITED STATES DISTRICT COURT  
DISTRICT OF UTAH, NORTHERN DIVISION

UNITED STATES OF AMERICA, )  
)  
Plaintiff )  
)  
vs )  
)  
KARA KINGSFORD, )  
)  
Defendant )

**ORDER**

Case No. 2:08-cr-850

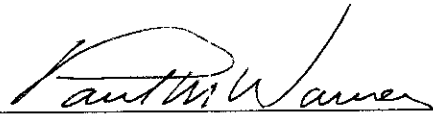
Judge Paul Warner

Retail Theft  
in violation of Utah Code § 76-6-602  
as assimilated by 18 U.S.C. § 13

UPON MOTION OF PLAINTIFF, THE UNITED STATES OF AMERICA, and good  
cause shown, IT IS HEREBY ORDERED that the above-cited case be dismissed without  
prejudice.

DATED this 13<sup>th</sup> day of January, 2009.

BY ORDER OF THE COURT:

  
PAUL WARNER  
Judge, United States District Court

---

IN THE UNITED STATES DISTRICT COURT  
DISTRICT OF UTAH, CENTRAL DIVISION

---

UNITED STATES OF AMERICA,

Plaintiff,

vs.

ALBERTO NAVARRO-ACOSTA,

Defendant.

:  
:  
:  
:

Case No. 2:08-CR-859 TC

ORDER SETTING DISPOSITION  
DATE AND EXCLUDING TIME  
FROM SPEEDY TRIAL  
COMPUTATION

---

This matter came before this Court on 12/3/0/08 for the purpose of an initial appearance and arraignment. The defendant, who was present, was represented by Carlos Garcia . The United States was represented by Assistant United States Attorney Cy Castle. This defendant has been charged with Illegal Reentry of a Previously Removed Alien in violation of 8 U.S.C. § 1326.

The United States Attorney's Office for the District of Utah has indicated that this defendant meets the eligibility requirements for the "fast-track" benefit, namely, an additional reduction in his or her sentence. However, in order to derive the benefit of this reduction, the defendant must agree to certain conditions as set forth in the fast-track program.

This defendant did not, and is not required at this hearing, to enter a plea of guilty, nor is he/she required at this hearing to commit to enter a plea of guilty. However, the defendant, through counsel, has indicated that he/she wishes to preserve his/her opportunity to participate in the program, and has consented, in writing, to the initiation and disclosure to the Court and the parties of a pre-plea disposition report.

The defendant has requested that this Court set this matter for a status/change of plea hearing date approximately 55 days from the date of this initial appearance and arraignment. Counsel for the defendant has indicated that such will afford counsel the time necessary to meaningfully explain to the defendant the details of the fast-track program and its potential application to this case. Additionally, this time will provide the defendant an adequate opportunity to make an informed decision whether to participate in the program. Therefore, based upon the reasons set forth above, this Court ORDERS that this matter be scheduled for **2/23/09 at 2:30 p.m.** before **Judge Campbell**.

This Court finds, pursuant to 18 U.S.C. § 3161(h)(1)(I), that this period of delay is a result of the necessary consideration by the Court and parties of this proposed plea agreement. Additionally, this Court finds, pursuant to 18 U.S.C. § 3161(h)(8)(A), that the ends of justice outweigh the best interest of the public and defendant in a speedy trial and that, pursuant to 18 U.S.C. § 3161(h)(8)(B)(iv), that the failure to grant such a continuance would deny counsel

for the defendant and the defendant the reasonable time necessary for effective preparation and for discussion and deliberation of the proposed plea agreement, taking into account the exercise of due diligence, and would therefore result in a miscarriage of justice. Based on the foregoing, IT IS HEREBY ORDERED that, pursuant to 18 U.S.C. § 3161(h), all time between **12/3/0/08** (the date of this appearance), and **2/23/09** (the date of the scheduled status hearing) is excluded from computing the time within which the trial of this matter must commence.

DATED this 12/30/08 day of December, 2008.

BY THE COURT:

A handwritten signature in black ink, appearing to read 'Samuel Alba', written over a horizontal line.

Samuel Alba  
United States Magistrate Judge

Stephen J. Trayner, #4928  
Andrew D. Wright, #8857  
A. Joseph Sano, #9925  
STRONG & HANNI  
Attorneys for Defendant  
3 Triad Center, Suite 500  
Salt Lake City, Utah 84180  
Telephone: (801) 532-7080  
Facsimile: (801) 323-2037

---

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH  
CENTRAL DIVISION

---

TIM KREHBIEL and GERILYN KREHBIEL,	)	
individually and as guardians of Jessica Lynn	)	
Krehbiel,	)	
	)	ORDER FOR EXTENSION OF TIME
	)	REGARDING TRAVELERS'
Plaintiffs,	)	MEMORANDUM IN OPPOSITION
	)	TO PLAINTIFFS' CROSS MOTION
vs.	)	FOR SUMMARY JUDGMENT AND
	)	REPLY MEMORANDUM IN
TRAVELERS INSURANCE COMPANY	)	SUPPORT OF TRAVELERS'
	)	MOTION FOR SUMMARY
Defendant,	)	JUDGMENT
	)	
	)	Case No. 2:08-CV-00110-CW
	)	
	)	Judge Clark Waddoups

---

Pursuant to the Stipulation and Motion of the parties, through counsel, and good cause appearing, the Court hereby orders that the deadline for filing defendant Travelers' Memorandum in Opposition to Plaintiffs' Cross Motion for Summary Judgment and Reply Memorandum in Support of Travelers' Motion for Summary Judgment shall be extended to

February 6, 2009.

DATED this 14th day of January, 2009.

BY THE COURT:

A handwritten signature in black ink, reading "Clark Waddoups", written over a light blue horizontal line.

Clark Waddoups  
United States District Court Judge

Approved as to Form:

/s/ Karra J. Porter

---

Karra J. Porter  
Attorney for Plaintiffs

004233.00073

Peter M. de Jonge, Utah Bar No. 7185  
Jed H. Hansen, Utah Bar No. 10,679  
THORPE NORTH & WESTERN, L.L.P.  
8180 South 700 East, Suite 350  
Sandy, Utah 84070-0562  
Telephone: (801) 566-6633  
Facsimile: (801) 566-0750

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U.S. DISTRICT COURT  
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DISTRICT OF UTAH  
BY: Ce  
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*Attorneys for Plaintiff, Connor Sport Court International, Inc.*

---

**IN THE UNITED STATES DISTRICT COURT  
DISTRICT OF UTAH, CENTRAL DIVISION**

---

CONNOR SPORT COURT  
INTERNATIONAL, INC., a Delaware  
Corporation,

Plaintiff,

vs.

SERVICEMAGIC.COM, INC., a Colorado  
Corporation,

Defendant.

Case No. 2:08-cv-172 DS

**PROPOSED  
ORDER**

Judge David Sam

---

Having been apprised of the facts and for good cause shown, this Court grants the parties' Stipulated Motion to Extend Time to Answer Complaint, and

**IT IS HEREBY ORDERED:**

Defendant, ServiceMagic.Com, Inc. shall have an additional thirty (30) days within which to answer the Complaint in the above-captioned action, which Complaint was served on Defendant on September 30, 2008. First, Second and Third Stipulated Motions to Extend Time to Answer Complaint have been granted,

thereby extending the deadline for Defendant to answer complaint until January 18, 2009.

Defendant, ServiceMagic.Com, Inc. shall file an answer to the Complaint on or before February 17, 2009.

DATED this 13<sup>th</sup> day of January, 2009.

A handwritten signature in cursive script, appearing to read "David Sam", is written over a horizontal line.

Judge David Sam

---

**IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH**  
**CENTRAL DIVISION**

---

**GLOBAL SANITATION SOLUTIONS,  
INC. et al.,**

**Plaintiffs,**

**vs.**

**HANSEN ENERGY &  
ENVIRONMENTAL, LLC et al.,**

**Defendants.**

**MEMORANDUM DECISION  
AND ORDER**

**Case No. 2:08CV186 DAK**

---

This matter is before the court on Defendants Hansen Energy and Environmental, LLC, Conly Hansen, Carl S. Hansen, Jaron C. Hansen, and Jason Miller's ("Defendants") Second Motion to Dismiss. A hearing on the motion was set for January 13, 2009, but Plaintiffs' counsel did not appear for the hearing. James Belshe and Seth Black appeared for Defendants. Because Plaintiffs' counsel were not present, the court announced that it would decide the motion on the briefs. The court has carefully considered the memoranda and other materials submitted by the parties. Now being fully advised, the court renders the following Memorandum Decision and Order.

Pursuant to leave granted by the court, Plaintiffs have amended their Complaint twice in an attempt to allege a viable Lanham Act claim, which they have asserted in their Ninth and Tenth Claims for Relief. Defendants filed a Motion to Dismiss the Second Amended Complaint on September 12, 2008. Without leave of court, Plaintiffs then filed a Third Amended

Complaint, along with an Opposition Memorandum. Defendants then filed a Reply Memorandum, which addressed the changes made in the Third Amended Complaint.

For the reasons stated by Defendants, the court agrees Plaintiffs still have not set forth a viable Lanham Act in their Second or Third Amended Complaints. Although Plaintiffs have now alleged that they have an actual product, they have failed to alleged that Defendants have taken that product and repackaged it as their own. Such an omission is fatal under *Dastar Corp. v. Twentieth Century Fox Film Corporation* 539 U.S. 23 (2003) and its progeny. *See, e.g., General Universal Systems, Inc. v. Lee*, 379 F.3d 131, 149 (5th Cir. 2004) (“[Plaintiff] has not accused [defendant] of taking tangible copies of its software, removing its trademarks, and selling them as its own.”); *Bob Creeden & Associates, Ltd. v. Infosoft, Inc.*, 326 F. Supp. 2d 876, 880 (N.D. Ill. 2004) (finding that an allegation that defendant tried to sell plaintiff’s software is not equivalent to alleging that defendant took plaintiff’s software and merely repackaged it as its own); *Tao of Systems Integration, Inc. v. Analytical Services & Materials, Inc.*, 299 F. Supp. 2d 565, 572 (E. D. Va. 2004) (“To state a claim for reverse passing off, [plaintiff] must allege that the actual goods provided [by defendant] were in fact produced by [plaintiff], or the actual services provided [by defendant] were in fact performed by [plaintiff]”). Accordingly, Plaintiffs Lanham Act claims must be dismissed for failure to state a claim.

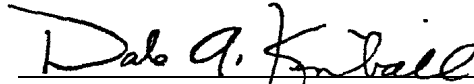
In addition, Plaintiffs do not dispute that the remaining claims are all state-law claims. The court declines to exercise supplemental jurisdiction over those claims. Accordingly, they are dismissed without prejudice.

### **CONCLUSION**

Accordingly, for the foregoing reasons, IT IS HEREBY ORDERED that Defendants' Second Motion to Dismiss [docket # 21 ] is GRANTED. The Ninth and Tenth Causes of Action are DISMISSED with prejudice. The remaining claims are DISMISSED without prejudice.

DATED this 14<sup>th</sup> day of January, 2009.

BY THE COURT:

  
\_\_\_\_\_  
DALE A. KIMBALL  
United States District Judge

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IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH  
CENTRAL DIVISION

BANKFIRST, a South Dakota State Bank,

Plaintiff,

vs.

JERRY MOYES,

Defendant.

ORDER GRANTING SECOND  
STIPULATION RE: DEADLINE TO  
ADD ADDITIONAL PARTIES AND  
AMEND PLEADINGS

Case No. 2:08cv00218

BSJ

JERRY C. MOYES,

Counterclaimant,

vs.


BANKFIRST, a South Dakota State Bank,

Counterdefendant.

The Court, having considered the parties' Second Stipulation re: Deadline to Add Additional Parties and Amend Pleadings, and good cause appearing therefore,

IT IS HEREBY ORDERED that the deadline to add additional parties and/or amend pleadings is extended to January 15, 2009.

DATED this 13 day of January, 2009.

  
HONORABLE BRUCE S. JENKINS  
UNITED STATES DISTRICT JUDGE

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BRUCE S. JENKINS

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Mark L. McCarty [6001]  
Zachary E. Peterson [8502]  
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Email: [mark-mccarty@rbmn.com](mailto:mark-mccarty@rbmn.com)  
[zachary-peterson@rbmn.com](mailto:zachary-peterson@rbmn.com)

IN THE UNITED STATES DISTRICT COURT  
IN THE DISTRICT OF UTAH

SHAHAB SHABESTARI,

Plaintiff,

v

UTAH NONPROFIT HOUSING  
CORPORATION, MARY JANE FINE, and  
MARCI MILLIGAN

Defendants.

**ORDER ON MOTION TO COMPEL AND  
MOTION TO EXTEND DISCOVERY  
CUTOFF DATE**

Case No. 2:08cv00222  
Judge Bruce S. Jenkins

This matter came before the Court on December 22, 2008. The Court heard argument on Plaintiff's Motions to Compel and Motion to Extend the Discovery Cutoff Date. Following the arguments of counsel, the Court makes the following:

**ORDER**

1. Plaintiff's Motion to Compel is denied. hereby granted as follows:
  - a. Discovery shall be extended until Friday, February 27, 2009.

- Plaintiff may take the depositions of Marion Willey and Mary Jane Fine; and
  - Defendant may take the deposition of David Fox.
- b. Dispositive motions are due on or before Friday, March 13, 2009.
- c. An agreed upon Pretrial Order to be filed with the Court no later than Tuesday, April 21, 2009, including lists of witnesses, exhibits and issues to be tried.
- d. Final Pretrial Conference on Thursday, April 23, 2009 at 9:30 a.m.

DATED this 13 day of January, 2009.

SO ORDERED:

  
HONORABLE JUDGE BRUCE S. JENKINS

APPROVED AS TO FORM:

---

Mary Anne Wood  
WOOD CRAPO  
*Attorneys for Defendants*

G:\EDS\DOCS\17663\0001\MZ1019.DOC



1. A Party may designate as “Confidential” any testimony, documents, discovery responses, records or tangible things served or produced by that Party in response to formal discovery demands, disclosures, or subpoenas, which the Party so designating in good faith asserts contain, reflect, refer to, disclose, or constitute any trade secrets, confidential, financial, business, client, or proprietary information of the Party so designating (information designated as “Confidential” shall collectively be referred to herein as “Confidential Information”). In order to designate documents, records, or tangible things as Confidential Information, the producing Party shall stamp the front page of such material as “Confidential” and, in the case of information produced in electronic format, the producing Party shall stamp the CD containing the electronic data as “Confidential.”

2. The Parties shall not disclose or use any Confidential Information other than in accordance with the terms and conditions of this Protective Order.

3. Confidential Information shall not be used for any purpose other than the conduct of this Lawsuit. No one shall be permitted access to Confidential Information except for the prosecution or defense or appeal of this Lawsuit, except that a Party may use their own Confidential Information for any purpose.

4. Confidential Information may be disclosed only to the following:

- (a) The receiving Party’s counsel of record and counsel’s employees to whom it is necessary that such information be shown for purposes of conducting the Lawsuit;
- (b) Experts and consultants retained by counsel for the receiving Party for the conduct of the Lawsuit;
- (c) The receiving Party and the receiving Party’s officers, employees, agents, and representatives, who actually assist counsel for the receiving Party in the conduct of the Lawsuit;

- (d) Deponents of the Parties at their depositions and such court reporter personnel; and,
- (e) The Court (including Court personnel and jurors) in accordance with the provisions of paragraph 5 of this Protective Order.

5. Confidential Information may be filed with the Court under seal as follows: the designated documents or materials shall be placed in a sealed envelope or other appropriately sealed container on which shall be stated (i) the name and caption of the Lawsuit or Related Lawsuits; (ii) the name of the Party filing the sealed envelope or the container; and, (iii) a statement substantially in the following form:

This envelope (or container) is sealed pursuant to a Protective Order, and is not to be opened nor the contents thereof displayed or revealed to anyone other than counsel of record in this action or employees and agents of the Court, except pursuant to stipulation of the producing Party or order of the Court.

6. Confidential Information may be used in deposition proceedings in the Lawsuit and marked as exhibits to depositions only as follows:

If a Party asserts confidentiality with respect to all or any portion of deposition testimony and/or deposition exhibits, that Party shall, during the deposition or within fourteen (14) business days after the deposition transcript is received by the Party, designate in writing to opposing counsel with specificity the portions of the deposition and/or deposition exhibits with respect to which confidentiality is asserted.

7. This Protective Order shall not abrogate or diminish any contractual, statutory or other legal privilege or protection of a Party or person with respect to any Confidential Information. The fact that any materials are designated "Confidential" pursuant to this Protective Order shall not affect or operate as a means of objection to the admissibility of any such material. The fact that materials are designated as "Confidential" pursuant to this Protective Order shall not affect what a trier of fact in the Lawsuit or any other proceeding may find to be confidential or proprietary. However, absent a court order, written agreement of the

Parties hereto to the contrary, or as provided herein, no Party may disclose or use any Confidential Information obtained from another Party through discovery in this Lawsuit other than in accordance with this Protective Order.

8. Neither the taking of, nor the failure to take, any action to challenge any designation of confidentiality pursuant to this Protective Order or to enforce the provisions of this Protective Order shall constitute a waiver of any right, claim or defense by a Party in this Lawsuit.

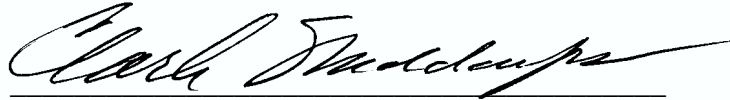
9. Other than is specifically provided herein, this Protective Order does not expand or limit the scope of discovery or the rights and the obligations of any Party with respect thereto in the Lawsuit.

10. Nothing in this Protective Order shall preclude any Party from seeking any alternative or additional protection with respect to the use and disclosure of any documents or materials.

11. Within thirty (30) days after final termination, settlement, or dismissal of this Lawsuit, counsel for a Party who has received Confidential Information from another Party will return all such Confidential Information in its possession, custody, or control to counsel for the Party who provided it, or will certify in writing to counsel for the Party who provided it that all of such Confidential Information has been destroyed.

12. This Protective Order may be amended or modified only by written stipulation of the Parties or by order of the Court.

SIGNED this 14<sup>th</sup> day of January, 2009.



HON. CLARK WADDOUPS  
UNITED STATES DISTRICT JUDGE  
DISTRICT OF UTAH

AGREED:

<u>/s/ Melissa A. Davis</u> Rodney Acker, Bar No. 00830700 Melissa A. Davis, Bar No. 00792995  FULBRIGHT & JAWORSKI L.L.P. 2200 Ross Avenue, Suite 2800 Dallas, Texas 75201 Telephone: 214.855.8000 Facsimile: 214.855.8200  Attorneys for Intervenor Midland Loan Services, Inc., as Special Servicer	<u>/s/ Walter A. Herring</u> Walter A. Herring, Bar No. 09535300  BRYAN CAVE LLP 2200 Ross Avenue, Suite 3300 Dallas, Texas 75201 Telephone: 214.721.8000 Facsimile: 214.721.8100  Attorneys for Intervenor Fannie Mae
<u>/s/ Patrick Holden</u> Arnold Richer, (2751) Patrick Holden, (6247)  RICHER & OVERHOLT, P.C. 901 West Baxter Drive South Jordan, Utah 84095 Telephone: 801.561.4750 Facsimile: 801.561.4744  Attorneys for Intevenor Crown NorthCorp, Inc.	<u>/s/ Thomas M. Melton</u> Karen L. Martinez, (7914) Thomas M. Melton, (4999)  Securities & Exchange Commission 15 West South Temple, Suite 1800 Salt Lake City, Utah 84101 Telephone: 801.524.5796  Attorneys for Plaintiff Securities & Exchange Commission

Kimberly D. Washburn (6681)  
LAW OFFICE OF KIMBERLY D. WASHBURN, P.C.  
405 East 12450 South, Suite H  
P.O. Box 1432  
Draper, Utah 84020  
Telephone: (801)571-2533  
Facsimile: (801)571-2513  
[kdwashburn\\_esq@msn.com](mailto:kdwashburn_esq@msn.com)  
*Attorney for Plaintiff*

---

IN THE UNITED STATES DISTRICT COURT  
IN AND FOR THE DISTRICT OF UTAH, CENTRAL DIVISION

---

ELLIOT RIDLEY, JR.,

Plaintiff,

v.

SALT LAKE CITY CORPORATION; DAX  
SHANE, JARED NAEGLE, DAVID R.  
MALLEY, Salt Lake City Police Officers in  
their official capacity and individual  
capacities; and JOHN DOES 1-10,

Defendants.

ORDER ALLOWING PLAINTIFF TO  
AMEND COMPLAINT

Case No.: 2:08-CV-483

Judge Clark Waddoups

---

Based upon the *Stipulation to Amendment of Plaintiff's Complaint*, the file herein and good cause otherwise appearing, the Court hereby orders that the Plaintiff may file his first amended complaint.

DATED this 14<sup>th</sup> day of January, 2009.

BY THE COURT:

A handwritten signature in black ink, reading "Clark Waddoups", written over a horizontal line.

HONORABLE CLARK WADDOUPS  
DISTRICT COURT JUDGE


DAVID G. MANGUM (4085)  
JULIETTE P. WHITE (9616)  
PARSONS BEHLE & LATIMER  
One Utah Center  
201 South Main Street, Suite 1800  
Salt Lake City, UT 84111  
Telephone: (801) 532-1234  
Facsimile: (801) 536-6111  
Attorneys for Defendant  
Dentsply International

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OFFICE OF U.S. DISTRICT JUDGE  
BRUCE S. JENKINS

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DISTRICT OF UTAH  
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IN THE UNITED STATES DISTRICT COURT  
DISTRICT OF UTAH, CENTRAL DIVISION

CAO Group, Inc. a Utah corporation,


Plaintiff,

vs.

Dentsply International Inc., a Delaware  
corporation,

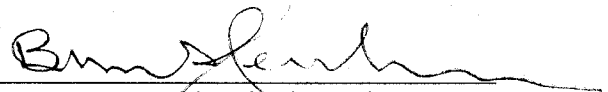
Defendant.

ORDER FOR PRO HAC  
VICE ADMISSION

Case No. 2:08-CV-501 

It appearing to the Court that Petitioner meets the pro hac vice admission requirements of DUCiv R 83-1.1(d), the motion for the admission pro hac vice of Steven D. Maslowski in the United States District Court, District of Utah in the subject case is GRANTED.

Dated: this 13 day of January, 2008.

  
U.S. District Judge

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IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF UTAH  
CENTRAL DIVISION  
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NINE MILE CANYON COALITION, <u>et al.</u> ,	)	DISTRICT OF UTAH
	)	
Plaintiffs,	)	BY: <u>DEPUTY CLERK</u>
	)	
	)	
v.	)	
	)	
MIKE STIEWIG, in his official capacity as the	)	
Associate Manger of the Price Field Office of the	)	Case No. 2:08cv586 (DB)
Bureau of Land Management, <u>et al.</u> ,	)	
	)	Honorable Dee Benson
Defendants,	)	
	)	
BILL BARRETT CORPORATION,	)	
	)	
Intervenor-Defendant.	)	

**PROPOSED ORDER GRANTING MOTION TO FILE AMICUS CURIAE BRIEF IN  
SUPPORT OF THE PLAINTIFFS NINE MILE CANYON COALITION ET AL.  
IN CASE NO. 2:08cv586**

Based on the Motion to File Amicus Curiae Brief in Support of the Plaintiffs Nine Mile Canyon Coaliton et al. in Case No. 2:08cv586, and for good cause appearing, it is –

HEREBY ORDERED that the National Trust for Historic Preservation in the United States, Utah Statewide Archaeological Society, Utah Rock Art Research Association, and American Rock Art Research Association be permitted to file an Amicus Curiae brief in Case No. 2:08cv586.

DATED this 14<sup>th</sup> day of Jan., 2008.



Dee Benson  
U.S. District Court Judge

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OFFICE OF JUDGE  
J. THOMAS GREENE

J. MICHAEL BAILEY (4965)  
BRENT BAKER (5247)  
J. THOMAS BECKETT (5587)  
JULIETTE P. WHITE (9616)  
ZACK L. WINZELER (12280)  
PARSONS BEHLE & LATIMER  
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Post Office Box 45898  
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Telephone: (801) 532-1234  
Facsimile: (801) 536-6111  
Attorneys for Plaintiff

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF UTAH

i-vu USA, INC., a Delaware registered  
company,

Plaintiff,

vs.

BROADBAND LEARNING, INC., a Utah  
registered company,

Defendant.

~~PROPOSED~~ ORDER GRANTING  
STIPULATED AND JOINT MOTION  
TO CONTINUE INITIAL PRETRIAL  
CONFERENCE

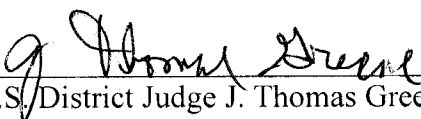
Case No. 2:08-CV-709

Judge J. Thomas Greene

THIS MATTER having come before the Court upon the parties' Stipulated and Joint Motion to Continue the Initial Pretrial Conference, and the Court having fully considered the matter, the Court finds that the motion is well-taken and should be granted.

It is hereby ORDERED that the initial pretrial conference in this case is continued from January 12, 2009 at 2:45 p.m. to January 26, 2009 at 10:30 a.m.

Dated this 13<sup>th</sup> day of January, 2009.

  
\_\_\_\_\_  
U.S. District Judge J. Thomas Greene

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DISTRICT OF UTAH

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Prepared and Submitted by:  
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polichb@ballardspahr.com  
moncurm@ballardspahr.com

Attorneys for Defendant Washington Mutual Bank

---

**IN THE UNITED STATES DISTRICT COURT**  
**DISTRICT OF UTAH, CENTRAL DIVISION**

---

**WILLIAM M. ROSS,**

**Plaintiff,**

**vs.**

**WASHINGTON MUTUAL BANK**

**Defendant.**

**ORDER OF DISMISSAL WITH  
PREJUDICE**

**Case No.: 2:08-cv-00710-JTG**

Removed from the Third Judicial District  
Court, Salt Lake County, State of Utah,  
Civil No. 080415209

Based on the Stipulated Motion for Dismissal with Prejudice executed by Plaintiff William M. Ross and Defendant Washington Mutual Bank ("Washington Mutual") and for good cause appearing, it is hereby ORDERED that this action and all claims asserted therein are DISMISSED WITH PREJUDICE, each party to bear their own attorneys' fees and costs.

DATED this 13<sup>th</sup> day of January 2008.

BY THE COURT

J. Thomas Greene  
Hon. J. Thomas Greene

---

IN THE UNITED STATES DISTRICT COURT  
DISTRICT OF UTAH, CENTRAL DIVISION

---

JESSE C. TRENTADUE,

:

Case No: 2:08-CV-788 CW

Plaintiff,

:

vs.

:

ORDER

UNITED STATES CENTRAL  
INTELLIGENCE AGENCY, FEDERAL  
BUREAU OF INVESTIGATION, and  
FEDERAL BUREAU OF  
INVESTIGATION'S OKLAHOMA CITY :  
FIELD OFFICE,

:

Judge Clark Waddoups

:


:

Defendants.

---

Having reviewed defendants' Motion for an Extension of Time to Answer or Otherwise Respond to Plaintiff's Amended Complaint, and for good cause shown, defendants' motion is hereby GRANTED. Defendants shall file their Answer or other response to plaintiff's Amended Complaint on or before April 13, 2009.

Dated this 14<sup>th</sup> day of January, 2009.



The Honorable Clark Waddoups  
United States District Judge

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF UTAH CENTRAL DIVISION

---

**TY PIKAYVIT,**

Plaintiff,

vs.

**CLETE CARTER,**

Defendant.

**SCHEDULING ORDER AND  
ORDER VACATING HEARING**

Case No.: 2:08-CV-806 TS

District Judge Ted Stewart

---

Pursuant to Fed.R. Civ P. 16(b), the Magistrate Judge<sup>1</sup> received the Attorneys' Planning Report filed by counsel (docket #11). The following matters are scheduled. The times and deadlines set forth herein may not be modified without the approval of the Court and on a showing of good cause.

IT IS ORDERED that the Initial Pretrial Hearing set for January 14, 2009, at 10:30 a. m. is VACATED.

**\*\*ALL TIMES 11:59 PM UNLESS INDICATED\*\***

- |           |   |                      |
|-----------|---|----------------------|
| <b>1.</b> | <b>PRELIMINARY MATTERS</b>  | <b><u>DATE</u></b>   |
|           | Nature of claim(s) and any affirmative defenses:  |                      |
|           | a. Was Rule 26(f)(1) Conference held?   | <u>01/09/09</u>      |
|           | b. Has Attorney Planning Meeting Form been submitted?                                       | <u>01/13/09</u>      |
|           | c. Was 26(a)(1) initial disclosure completed?   | <u>01/30/09</u>      |
| <br>      |   |                      |
| <b>2.</b> | <b>DISCOVERY LIMITATIONS</b>  | <b><u>NUMBER</u></b> |
|           | a. Maximum Number of Depositions by Plaintiff(s)  | <u>10</u>            |
|           | b. Maximum Number of Depositions by Defendant(s)  | <u>10</u>            |
|           | c. Maximum Number of Hours for Each Deposition<br>(unless extended by agreement of parties) | <u>7</u>             |
|           | d. Maximum Interrogatories by any Party to any Party  | <u>25</u>            |
|           | e. Maximum requests for admissions by any Party to any Party                                | <u>Unlimited</u>     |

f. Maximum requests for production by any Party to any Party Unlimited  
DATE

**3. AMENDMENT OF PLEADINGS/ADDING PARTIES<sup>2</sup>**

a. Last Day to File Motion to Amend Pleadings 01/09/09

b. Last Day to File Motion to Add Parties 01/09/09

**4. RULE 26(a)(2) REPORTS FROM EXPERTS<sup>3</sup>**

a. Plaintiff 30 days  
after Court  
rules on  
dispositive  
motions

b. Defendant 30 days  
after Court  
rules on  
dispositive  
motions

**5. OTHER DEADLINES**

a. Discovery to be completed by:

Fact discovery 07/10/09

Expert discovery 60 days after  
Court rules  
on dispositive  
motions

b. *(optional)* Final date for supplementation of disclosures and discovery under Rule 26 (e)

c. Deadline for filing dispositive or potentially dispositive motions 08/24/09

**6. SETTLEMENT/ ALTERNATIVE DISPUTE RESOLUTION**

a. Referral to Court-Annexed Mediation No

b. Referral to Court-Annexed Arbitration No

- c. Evaluate case for Settlement/ADR on Within 60 days of Court ruling on dispositive motions
- d. Settlement probability: Engaged in negotiations at this time

**7. TRIAL AND PREPARATION FOR TRIAL:**

- a. Rule 26(a)(3) Pretrial Disclosures<sup>4</sup>
- |           |                 |
|-----------|-----------------|
| Plaintiff | <b>11/20/09</b> |
| Defendant | <b>12/04/09</b> |
- b. Objections to Rule 26(a)(3) Disclosures  
(if different than 14 days provided in Rule) **20 days after filing Rule 26(a)(3) Pretrial Disclosures**
- DATE**
- c. Special Attorney Conference<sup>5</sup> on or before **12/18/09**
- d. Settlement Conference<sup>6</sup> on or before 12/18/09
- e. Final Pretrial Conference 2:30 p.m. 01/13/10
- f. Trial
- |                | <u>Length</u> | <u>Time</u>      | <u>Date</u>     |
|----------------|---------------|------------------|-----------------|
| i. Bench Trial | <u># days</u> | _____            | _____           |
| ii. Jury Trial | <u>3 days</u> | <u>8:30 a.m.</u> | <u>01/27/10</u> |

**8. OTHER MATTERS:**

- a. Counsel should contact chambers staff of the District Judge regarding Daubert and Markman motions to determine the desired process for filing and hearing of such motions. All such motions, including Motions in Limine should be filed well in advance of the Final Pre Trial. Unless otherwise directed by the court, any challenge to the qualifications of an expert or the reliability of expert testimony under Daubert must be raised by written motion before the final pre-trial conference.
- b. All discovery may be served and answered by electronic means.
- c. All deadlines may be met by filing on or before 11:59 p.m. of the day of the deadline if using the CM/ECF electronic filing system.

- d. Expert Witnesses must be disclosed in writing, with all contact information, to the opposing parties within 30 days of being retained.
- e. The Parties have stipulated to a DUCiv-r 16 Order of Reference for Settlement Conference within thirty (30) days of a ruling on any dispositive motion.

Dated this 13th day of January, 2009.

BY THE COURT:

  
\_\_\_\_\_  
David Nuffer  
U.S. Magistrate Judge

1. The Magistrate Judge completed Initial Pretrial Scheduling under DUCivR 16-1(b) and DUCivR 72-2(a)(5). The name of the Magistrate Judge who completed this order should NOT appear on the caption of future pleadings, unless the case is separately referred to that Magistrate Judge. A separate order may refer this case to a Magistrate Judge under DUCivR 72-2 (b) and 28 USC 636 (b)(1)(A) or DUCivR 72-2 (c) and 28 USC 636 (b)(1)(B). The name of any Magistrate Judge to whom the matter is referred under DUCivR 72-2 (b) or (c) should appear on the caption as required under DUCivR10-1(a).
2. Counsel must still comply with the requirements of Fed. R. Civ. P. 15(a).
3. A party shall disclose the identity of each testifying expert and the subject of each such expert's testimony at least 60 days before the deadline for expert reports from that party. This disclosure shall be made even if the testifying expert is an employee from whom a report is not required.
4. Any demonstrative exhibits or animations must be disclosed and exchanged with the 26(a)(3) disclosures.
5. The Special Attorneys Conference does not involve the Court. Counsel will agree on voir dire questions, jury instructions, a pre-trial order and discuss the presentation of the case. Witnesses will be scheduled to avoid gaps and disruptions. Exhibits will be marked in a way that does not result in duplication of documents. Any special equipment or courtroom arrangement requirements will be included in the pre-trial order.
6. The Settlement Conference does not involve the Court unless a separate order is entered. Counsel must ensure that a person or representative with full settlement authority or otherwise authorized to make decisions regarding settlement is available in person or by telephone during the Settlement Conference.

S:\IPT\2009\Pikyavit v. Carter 208cv806TS 0113 tb.wpd

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH  
CENTRAL DIVISION

FILED  
U.S. DISTRICT COURT  
2009 JAN 13 P 3:02

WESLEY A. TUTTLE, )  
 )  
Plaintiff, ) Case No. 2:08-CV-857 DS  
 )  
v. ) District Judge David Sam  
 )  
LOWELL CLARK et al., ) O R D E R  
 )  
Defendants. )

DISTRICT OF UTAH

BY: ce  
DEPUTY CLERK

On November 6, 2008, the Court sent an order to Plaintiff at the address listed on the docket. The order was returned, marked, "RETURN TO SENDER NOT DELIVERABLE AS ADDRESSED UNABLE TO FORWARD." The Court has not since heard from Plaintiff. IT IS THUS ORDERED that this case is dismissed for failure to prosecute.<sup>1</sup>

DATED this 13<sup>th</sup> day of January, 2009.

BY THE COURT:



DAVID SAM  
United States District Judge

<sup>1</sup>See Fed. R. Civ. P. 41(b); Link v. Wabash R.R. Co., 370 U.S. 626, 630-31, 82 S. Ct. 1386, 1388-89 (1962); Olsen v. Mapes, 333 F.3d 1199, 1204 n.3 (10th Cir. 2003).

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**IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH**  
**CENTRAL DIVISION**

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**RAOUL MORENO,**

**Plaintiff,**

**vs.**

**UNITED STATES OF AMERICA,**

**Defendant.**

**ORDER**

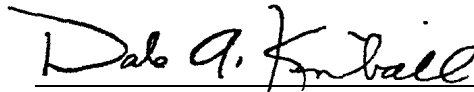
**Case No. 2:08CV861DAK**

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On November 7, 2008, Petitioner filed a Motion to Vacate, Set Aside, or Correct Sentence under 28 U.S.C. § 2255. The government filed a response on December 18, 2008. On January 12, 2009, Petitioner filed a request for a thirty day period in which to file a memorandum in support of his petition. The court grants Petitioner's request and sets February 17, 2009 as the deadline for Petitioner to file a memorandum.

DATED this 14<sup>th</sup> day of February, 2009.

BY THE COURT:



DALE A. KIMBALL

United States District Judge

RECEIVED CLERK

DEC 11 2008

BRETT L. TOLMAN, United States Attorney (#8821)  
JARED C. BENNETT, Assistant United States Attorney (#9097)  
BRIAN H. CORCORAN, Department of Justice (*pro hac vice admission pending*)  
Attorneys for the United States of America  
185 South State Street, Ste. 300  
Salt Lake City, Utah 84111  
Telephone: (801) 524-5682

FILED  
U.S. DISTRICT COURT  
2009 JAN 14 AM 10:38  
DISTRICT OF UTAH  
BY: DEPUTY CLERK

IN THE UNITED STATES DISTRICT COURT, DISTRICT OF UTAH  
CENTRAL DIVISION

UNITED STATES OF AMERICA,

:

Civil Nos.

Petitioner,

:

**ORDER TO SHOW CAUSE**

vs.

:

Case: 2:08cv00953

Assigned To : Benson, Dee

Assign. Date : 12/11/2008

Description: USA v Callister Nebeker  
& McCullough, P.C.

CALLISTER NEBEKER &  
MCCULLOUGH, P.C.,

:

Respondent.

:

Upon the petition of the United States and the Declaration of Revenue Agent Rachael Jaeckel, including the exhibits attached thereto, it is hereby ORDERED that the Respondent Callister Nebeker & McCullough P.C., appear before the Honorable Dee Benson, in that Judge's courtroom in the United States Courthouse, 350 South Main Street, Salt Lake City, Utah 84101-2180 on the 5 day of March, 2009 at 2:30 p.m., to show cause why Respondent should not be compelled to obey the Internal Revenue Service summons served upon it.

It is further ORDERED that:

1. A copy of this Order, together with the petitions and its exhibit, shall be served in

accordance with Rule 4(e) of the Federal Rules of Civil Procedure upon the Respondent within 21 days of the date that this Order is served upon counsel for the United States or as soon thereafter as possible. Pursuant to Rule 4.1(a) the Court hereby appoints Revenue Agent Racheal Jaeckel, or any other person designated by the IRS to effect service in this case.

2. Proof of any service done pursuant to paragraph 1, above, shall be filed with the Clerk as soon as practicable.

3. Because the file in this case reflects a *prima facie* showing that the investigation is being conducted for a legitimate purpose, that the inquiries may be relevant to that purpose, that the information sought is not already within the Commissioner's possession, and that the administrative steps required by the Internal Revenue Code have been substantially followed, the burden of coming forward has shifted to the Respondent to oppose enforcement of the summons.

4. If the Respondent has any defense to present or opposition to the petition, such defense or opposition shall be made in writing and filed with the Clerk and copies served on counsel for the United States, at least 14 days prior to the date set for the show cause hearing. The United States may file a reply memorandum to any opposition at least 5 days prior to the date set for the show cause hearing.

5. At the show cause hearing, only those issues brought into controversy by the responsive pleadings and factual allegations supported by affidavit will be considered. Any uncontested allegation in the petition will be considered admitted.

6. Respondent may notify the Court, in a writing filed with the Clerk and served on counsel for the United States at the addresses on the petition, at least 14 days prior to the date set for the show cause hearing, that the Respondent has no objection to enforcement of the summons.

Respondent's appearance at the hearing will then be excused.

7. The Respondent is hereby notified that a failure to comply with this Order may subject him to sanctions for contempt of court.

SO ORDERED this 14 day of January, 2008

Dee Benson  
United States District Judge

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF UTAH, CENTRAL DIVISION

FILED  
U.S. DISTRICT COURT

2009 JAN 14 A 11:29

BRAHMA GROUP, INC.,

Plaintiff,

vs.


BENHAM CONSTRUCTORS, LLC, et al.,

Defendants.

ORDER FOR *PRO HAC VICE*  
ADMISSION

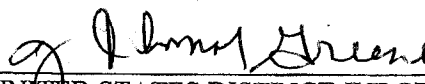
Case No. 2:08cv00970

Judge J. Thomas Green

DISTRICT CLERK  
BY:   
DEPUTY CLERK

It appearing to the Court that Petitioner meets the *pro hac vice* admission requirements of  
DUCiv R 83-1.1(d), the motion for the admission *pro hac vice* of Jacob D. McElwee in the  
United States District Court, District of Utah in the subject case is GRANTED.

Dated this 13<sup>th</sup> day of January, 2009

  
UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF UTAH, CENTRAL DIVISION

FILED  
U.S. DISTRICT COURT

2009 JAN 14 A 11:29

BRAHMA GROUP, INC.,

Plaintiff,

vs.

BENHAM CONSTRUCTORS, LLC, et al.,

Defendants.

ORDER FOR *PRO HAC VICE*  
ADMISSION

Case No. 2:08cv00970

Judge J. Thomas Green

DISTRICT CLERK  
BY: CE  
CLERK

It appearing to the Court that Petitioner meets the *pro hac vice* admission requirements of D.U. Civ. Rule 83-1.1(d), the motion for the admission *pro hac vice* of Jeffrey A. Kennard in the United States District Court, District of Utah in the subject case is GRANTED.

Dated this 13<sup>th</sup> day of January, 2009

J. Thomas Green  
UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES COURT FOR THE DISTRICT OF UTAH  
CENTRAL DIVISION

JOHN M. DURAN,  
Plaintiff,

vs.

UTAH DEPARTMENT OF TECHNOLOGY  
SERVICES, UTAH DEPARTMENT OF  
WORKFORCE SERVICES, J. STEPHEN  
FLETCHER, GREG GARDNER, JIM  
MATSUMURA, SCOTT MOFFIT, JIM  
HOWARD, ABDUL M. BAKSH,  
MEREDITH CALEGORY (JOHN) and  
JOHN AND JANE DOES 1-20,  
Defendants.

MEMORANDUM DECISION AND  
ORDER DISMISSING PLAINTIFF'S  
CLAIMS WITH PREJUDICE AND  
DENYING PLAINTIFFS' MOTION  
TO APPOINT COUNSEL AS MOOT

Case No. 2:08-CV-973 TS

Plaintiff John Duran filed a Complaint in this matter on December 18, 2008,<sup>1</sup> along with a Motion to Appoint Counsel<sup>2</sup> and an Affidavit in support of Extending Time to File Complaint and Equitable Tolling.<sup>3</sup> The latter was necessary because Plaintiff failed to file a Complaint within 90

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<sup>1</sup>Docket No. 3.

<sup>2</sup>Docket No. 4.

<sup>3</sup>Docket No. 5.

days of receiving a right-to-sue letter from the United States Equal Employment Opportunities Commission. For the reasons described below, the Court will dismiss Plaintiff's case. As a result, his Motion to Appoint Counsel is moot.

## I. BACKGROUND

The following facts are taken from Plaintiff's Complaint. Plaintiff is a U.S. Citizen of Hispanic origin who was employed by the Utah Department of Technology Services ("UDTS") from September 2002 through July 10, 2007, as a LAN II specialist. Defendants Fletcher, Gardner, and Matsumura are employed by Defendant UDTS. Defendants Moffitt, Howard, Baksh, and John are employed by the Utah Department of Workforce Services ("UDWS"), also a Defendant in this case.

In February 2006, Plaintiff was reassigned from his previous workplace in Salt Lake City to the Davis County employment center, and was the only LAN administrator at that site. Plaintiff required permission prior to traveling to other UDWS buildings. Plaintiff argues that he was also blacklisted from advancement or employment with UDWS or UDTS, and that these actions were taken because of his race, gender, religion, and retaliation for his exercise of his First Amendment Free Speech rights.

Plaintiff filed a charge against the UDWS with the Equal Employment Opportunities Commission ("EEOC"), and received a right-to-sue letter from the EEOC on May 22, 2008. In that letter, Plaintiff was notified that he had 90 days to file a civil action against Defendants. The 90-day period ended August 20, 2008, approximately 120 days prior to the filing of Plaintiff's Complaint. Plaintiff argues that a medical condition prevented him from filing in a timely manner, and that his failure to file was therefore a result of excusable neglect, as required by Fed. R. Civ. P. 6(b)(1)(B). No charge was ever filed against the UDTS with the EEOC.

## II. DISCUSSION

Plaintiff is proceeding *pro se* and *in forma pauperis*. Because Plaintiff was granted permission to proceed *in forma pauperis*, the provisions of the *in forma pauperis* statute, 28 U.S.C. § 1915, are applicable. Under § 1915 the Court shall, at any time, *sua sponte* dismiss the case if the Court determines that the Complaint is frivolous or fails to state a claim upon which relief may be granted.<sup>4</sup> A claim is frivolous if it “lacks an arguable basis either in law or in fact.”<sup>5</sup>

### A. FRIVOLOUS

Duran brings claims of racial and religious discrimination, creation of a hostile work environment, and retaliation under Title VII, as well as a claim of violations of the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution against his former employer, the Utah Department of Technology Services (“UDTS”), along with the Utah Department of Workforce Services (“UDWS”) and various supervisors and other employees of UDTS and UDWS.

### B. FAILURE TO STATE A CLAIM

#### 1. *Title VII Claims are Time-Barred*

The Court will dismiss Plaintiff’s Title VII claims because they are untimely and otherwise fail to state a claim upon which relief can be granted. The Court finds that Plaintiff has failed to file his Title VII claims against UDWS in a timely manner, and that Plaintiff has failed to exhaust his administrative remedies against UDTS. The Court therefore finds that Plaintiff’s Title VII claims are time barred.

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<sup>4</sup>28 U.S.C. § 1915(e)(2).

<sup>5</sup>*Neitzke v. Williams*, 490 U.S. 319, 325 (1989).

a. *Claims against UDWS are time-barred*

Plaintiff exhausted his administrative remedies in his claims against UDWS, and received a right-to-sue letter from the EEOC. However, Plaintiff failed to File his Complaint within 90 days of that letter, as required by Title VII. “Compliance with the filing requirements of Title VII . . . functions like a statute of limitations.”<sup>6</sup> Thus, Plaintiff can only proceed upon a showing that the doctrine of equitable tolling is applicable.<sup>7</sup> Plaintiff has argued that Fed. R. Civ. P. 6(b)(1)(B) allows the Court to extend the deadline for filing the Complaint upon a showing of excusable neglect. However, the Tenth Circuit has stated that equitable tolling is only available “where the defendant has actively misled the plaintiff respecting the cause of action, or where the plaintiff has in some extraordinary way been prevented from asserting his rights.”<sup>8</sup>

Plaintiff has not alleged that Defendants are, in any way, responsible for his lack of timely filing. Moreover, the Court finds that Plaintiff’s medical condition, though certainly disruptive to Plaintiff’s life, is not so extraordinary as to allow Plaintiff to invoke the doctrine of equitable tolling. Plaintiff claims that his medical condition began in August 2008, but if so, it would have been at the end of the 90-day window in which Plaintiff could have filed his Complaint. However, arthritis, even severe arthritis, is not so extraordinary that Plaintiff was prevented from asserting his rights. It would have been more difficult for him to assert his rights, possibly much more difficult, but being subject to increased difficulties is not the same as being prevented from asserting rights. Because

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<sup>6</sup>*Million v. Frank*, 47 F.3d 385, 389 (10th Cir. 1995).

<sup>7</sup>*Tademy v. Union Pac. Corp.*, 520 F.3d 1149, 1167-68 (10th Cir. 2008) (“In general, plaintiffs may only revive lapsed claims through equitable tolling.”).

<sup>8</sup>*Million*, 47 F.3d at 389.

there is extraordinary condition excusing Plaintiff's untimely filing, his Title VII claims against UDWS will be dismissed.

b. *Claims against UDTS are time-barred*

The right-to-sue letter received by Plaintiff from the EEOC indicates that Plaintiff failed to file a charge against UDTS. The Court is therefore precluded from considering Plaintiff's Title VII claims against UDTS, for:

[a] plaintiff must generally exhaust his or her administrative remedies prior to pursuing a Title VII claim in federal court. Thus, a plaintiff normally may not bring a Title VII action based on claims that were not part of a timely-filed EEOC charge for which the plaintiff has received a right to sue letter.<sup>9</sup>

The evidence presently before the Court indicates that Plaintiff failed to file a charge against UDTS with the EEOC within 180 days, or with the Utah Antidiscrimination and Labor Division within 300 days, of the alleged discrimination, as required by Title VII.<sup>10</sup> Plaintiff's Title VII claims against UDTS are therefore untimely, and will be dismissed.

2. *Title VII claims otherwise fail to state a claim*

Even if Plaintiff's Title VII claims were not untimely, the Court would still be required to dismiss those claims for failure to state a claim upon which relief can be granted. In construing the Complaint, all well-pleaded factual allegations, as distinguished from conclusory allegations, are accepted as true and viewed in the light most favorable to the non-moving party.<sup>11</sup> Plaintiff must

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<sup>9</sup>*Simms v. Oklahoma ex rel. Dep't of Mental Health and Substance Abuse*, 165 F.3d 1321, 1326 (10th Cir. 1999). *See also Foster v. Ruhrpumpen, Inc.*, 365 F.3d 1191, 1194-95 (10th Cir. 2004).

<sup>10</sup>*See* 42 U.S.C. § 2000e-5(e)(1); 29 C.F.R. § 1601.13.

<sup>11</sup>*Ruiz v. McDonnell*, 299 F.3d 1173, 1181 (10th Cir. 2002).

provide “enough facts to state a claim to relief that is plausible on its face.”<sup>12</sup> All well-pleaded factual allegations in the Complaint are accepted as true and viewed in the light most favorable to the nonmoving party.<sup>13</sup> But, the court “need not accept conclusory allegations without supporting factual averments.”<sup>14</sup> “The court’s function . . . is not to weigh potential evidence that the parties might present at trial, but to assess whether the plaintiff’s complaint alone is legally sufficient to state a claim for which relief may be granted.”<sup>15</sup> Thus, “the complaint must give the court reason to believe that this plaintiff has reasonable likelihood of mustering factual support for these claims.”<sup>16</sup>

Because Plaintiff proceeds *pro se*, the Court must construe his pleadings liberally and hold his submissions to a less stringent standard than formal pleadings drafted by lawyers.<sup>17</sup> This means that “if the court can reasonably read the pleadings to state a valid claim on which the plaintiff could prevail, it should do so despite the plaintiff’s failure to cite proper legal authority, his confusion of various legal theories, his poor syntax and sentence construction, or his unfamiliarity with pleading requirements.”<sup>18</sup> No special legal training is required to recount facts surrounding an alleged injury,

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<sup>12</sup>*Bell Atlantic Corp. v. Twombly*, 127 S.Ct. 1955, 1974 (2007) (dismissing complaint where plaintiffs “have not nudged their claims across the line from conceivable to plausible”).

<sup>13</sup>*GFF Corp. v. Associated Wholesale Grocers, Inc.*, 130 F.3d 1381, 1384 (10th Cir. 1997).

<sup>14</sup>*Southern Disposal, Inc., v. Texas Waste*, 161 F.3d 1259, 1262 (10th Cir. 1998); *Hall v. Bellmon*, 935 F.2d 1106, 1110 (10th Cir. 1991).

<sup>15</sup>*Miller v. Glanz*, 948 F.2d 1562, 1565 (10th Cir. 1991).

<sup>16</sup>*Ridge at Red Hawk, L.L.C. v. Schneider*, 493 F.3d 1174, 1177 (10th Cir. 2007).

<sup>17</sup>*Id.*

<sup>18</sup>*Id.*

and *pro se* litigants must allege sufficient facts, on which a recognized legal claim could be based.<sup>19</sup>

A *pro se* plaintiff “whose factual allegations are close to stating a claim but are missing some important element that may not have occurred to him, should be allowed to amend his complaint.”<sup>20</sup> Thus, “*pro se* litigants are to be given reasonable opportunity to remedy the defects in their pleadings,”<sup>21</sup> and the Court should dismiss the claim “only where it is obvious that he cannot prevail on the facts he has alleged and it would be futile to give him an opportunity to amend.”<sup>22</sup>

Construing the Complaint in accord with these principles, the Court finds that it fails to state a claim for relief against Defendants.

a. *Discrimination and Hostile Work Environment*

The Tenth Circuit has stated that a *prima facie* claim of employment discrimination under Title VII of the Civil Rights Act (the “Act”) must contain the following elements: (1) Plaintiff must be a member of a protected class under the Act; (2) Plaintiff must have suffered an adverse employment action; (3) the adverse employment action was not the result of Plaintiff’s lack of qualifications; and (4) Plaintiff must have been treated less favorably than others not in the protected class.<sup>23</sup> Plaintiff has alleged that he is of Hispanic origin and Christian, making him a member of a protected class based on his ethnic origin and also a member of a protected class based on his religious beliefs. Plaintiff has also alleged that he was transferred to the Davis County site, that the

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<sup>19</sup>*Id.*

<sup>20</sup>*Id.* (citing *Reynoldson v. Shillinger*, 907 F.2d 124, 126-27 (10th Cir. 1990)).

<sup>21</sup>*Id.* at 1110 n. 3.

<sup>22</sup>*Perkins v. Kan. Dept. of Corr.*, 165 F.3d 803, 806 (10th Cir. 1999).

<sup>23</sup>*DeWalt v. Meredith Corp.*, 288 Fed. Appx. 484, 492 (10th Cir. July 31, 2008).

transfer was a punishment for his exercise of his First Amendment rights, and that the transfer was the result of animus. The Court finds, however, that Plaintiff has failed to allege that he was treated less favorably than others not in either of the two protected classes of which Plaintiff is a member.

The Tenth Circuit has stated that a *prima facie* claim of hostile work environment under the Act must contain the following elements: (1) Plaintiff must have been subject to at least one action which is violative of the Act, taken by fellow employees or supervisors; (2) harassment must be pervasive or severe enough to alter the terms, conditions, or privilege of employment; and (3) the employer's response to incidents of which it was apprised must have been inadequate.<sup>24</sup> Plaintiff has alleged that he was discriminated against because of his Christian beliefs and his ethnic origin, and that the discrimination resulted in his being transferred to a different site, much farther away from his home. Plaintiff also alleges that he was prohibited from traveling freely between UDTs and UDWS sites. Construed liberally, these allegations meet the first and second elements of a hostile work environment claim. However, the Court finds that Plaintiff has failed to allege that UDTs and UDWS were ever apprised of the situation, and/or that their actions in response were inadequate.

b. *Retaliation*

Plaintiff also claims that Defendants retaliated against him for "exercising his First Amendment rights to free speech."<sup>25</sup> A claim of retaliation under the Act requires that: (1) Plaintiff engaged in protected opposition to discrimination; (2) Plaintiff's employer took adverse employment action against him; and (3) a causal connection exists between the protected activity and the adverse

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<sup>24</sup>*Tademy v. Union Pac. Corp.*, 520 F.3d 1149, 1156 (10th Cir. 2008).

<sup>25</sup>Docket No. 3 at 7.

action.<sup>26</sup> Plaintiff has failed to allege that his transfer to the Davis County site was in response to any action taken by Plaintiff in opposition to other discrimination by Defendants. Read in context with the remainder of the Complaint, it appears that Plaintiff is alleging that his transfer to the Davis County site was punishment for Plaintiff expressing his religious views, not for engaging in protected opposition to discrimination. Therefore, he has not alleged the required causal connection. Accordingly, he doesn't state a claim for retaliation under the Act.

### 3. *Equal Protection Claims*

Plaintiff also claims that Defendants' actions were a violation of Plaintiff's right of Equal Protection, guaranteed by the Fourteenth Amendment to the United States Constitution. Plaintiff's Equal Protection claims also fail to state a claim upon which relief can be granted. The United States Supreme Court has stated that an Equal Protection claim must allege that: (1) Plaintiff is a member of a protected class; and (2) members of that protected class were treated categorically differently than others in a similar position.<sup>27</sup> Even construing Plaintiff's Complaint liberally, Plaintiff fails to allege that members of the protected classes to which he belongs, Latinos and Christians, were treated categorically different from others who were similarly situated. At most, Plaintiff's Complaint follows the "class of one theory,"<sup>28</sup> which was rejected by the Supreme Court. "[W]e have never found the Equal Protection Clause implicated . . . where . . . government employers are alleged to have made an individualized, subjective personnel decision in a seemingly arbitrary or

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<sup>26</sup>*Fischer v. Forrestwood Co., Inc.*, 525 F.3d 972, 979 (10th Cir. 2008).

<sup>27</sup>*Engquist v. Or. Dep't of Agric.*, 128 S.Ct. 2146, 2152-53 (2008).

<sup>28</sup>*Id.* at 2153.

irrational manner.”<sup>29</sup> Plaintiff’s factual allegations are therefore insufficient to support an Equal Protection claim, and the claim will be dismissed.

### III. CONCLUSION

It is therefore

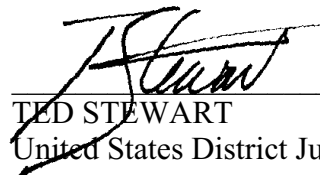
ORDERED that Plaintiff’s claims against all Defendants are DISMISSED with prejudice.

It is further

ORDERED that Plaintiff’s Motion to Appoint Counsel (Docket No. 108) is DENIED as moot.

DATED January 14, 2009.

BY THE COURT:

  
\_\_\_\_\_  
TED STEWART  
United States District Judge

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<sup>29</sup>*Id.* at 2155.

FILED  
U.S. DISTRICT COURT

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BY:                       
CLERK

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**IN THE UNITED STATES DISTRICT COURT**

**DISTRICT OF UTAH, CENTRAL DIVISION**

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OHIO SECURITY INSURANCE  
COMPANY, an Ohio corporation,

Plaintiff,

vs.

HUNTER DEVELOPMENT DESIGN, LLC,  
a Utah limited liability company; JEFFREY  
CHESHIRE doing business as "Cheshire  
Professional Finishes;" O.B. MASTER  
PAINTING, INC., a Utah corporation; and  
ALEX BANKHEAD,

Defendants.

**ORDER GRANTING  
EXTENSION OF TIME**

Civil No. 2:08-cv-974

Judge David Sam


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The Court, having reviewed the Stipulation of the parties and good cause  
appearing therefore, it is hereby

ORDERED that defendant Hunter Development Design, LLC shall have up through and including Friday, January 23, 2009, in which to file a responsive pleading to plaintiff's Complaint.

DATED this 13<sup>th</sup> day of January, 2009.

BY THE COURT:

  
\_\_\_\_\_  
The Honorable David Sam  
United States District Judge

Approved as to form:

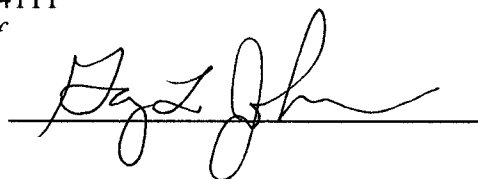
SUITTER AXLAND, PLLC

/s/ Noah M. Hoagland  
*(Signed by filing attorney with permission of*  
*Plaintiff's attorney)*  
MICHAEL W. HOMER  
NOAH M. HOAGLAND  
*Attorneys for Plaintiff*

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on the 9<sup>th</sup> day of January, 2009, I electronically filed the foregoing document with the Clerk of the Court using the CM/ECF system which sent notification of such filing to the following:

Michael W. Homer  
Noah M. Hoagland  
SUITTER AXLAND, PLLC  
8 East Broadway, Ste. 200  
Salt Lake City, UT 84111  
*Attorneys for Plaintiff*

A handwritten signature in black ink, appearing to read "Homer", is written over a horizontal line.

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RUSSELL P. BROWN, California State Bar No. 084505 (*pro hac vice* application pending)  
GORDON & REES LLP  
101 West Broadway, Suite 1600  
San Diego, California 92101  
Telephone: (619) 696-6700  
Facsimile: (619) 696-7124  
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SCOTT R. WANGSGARD, Utah State Bar No. 3376  
S.R. WANGSGARD, L.C.  
57 West 200 South, Suite 400  
Salt Lake City, Utah 84101  
Telephone: (801) 578-3510  
Facsimile: (801) 578-3531  
[srw@srwlc.com](mailto:srw@srwlc.com)

Attorneys for Plaintiff:  
ARAMARK SPORTS AND ENTERTAINMENT SERVICES, LLC

UNITED STATES DISTRICT COURT  
DISTRICT OF UTAH

In the Matter of the Complaint of ARAMARK	)	CASE NO. 2:08-CV-976 TS
SPORTS AND ENTERTAINMENT	)	
SERVICES, LLC, as owner, or owner <i>pro hac</i>	)	<b>IN ADMIRALTY</b>
<i>vice</i> , of the 75-foot Twin Anchors Excursion	)	
Houseboat "T-5" for Exoneration from or	)	<b>ORDER REGARDING INTERIM</b>
Limitation of Liability	)	<b>STIPULATION FOR VALUE AND FOR</b>
	)	<b>COSTS</b>
	)	

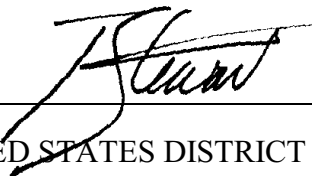
A Complaint for Exoneration from or Limitation of Liability having been filed by Plaintiff ARAMARK SPORTS AND ENTERTAINMENT SERVICES, LLC ("Plaintiff"), as owner and/or owner pro hac vice of the 75-foot Twin Anchors Excursion Houseboat "T-5", and said Plaintiff having prayed for an appraisal of the value of its interest in said Twin Anchors Excursion Houseboat "T-5", and the strippings and pending freight, and it appearing from the Declaration of Ken Harris, surveyor of said vessel, that immediately following the incident and total at the time of the events referred to in the Complaint, that the 75-foot Twin Anchors Excursion Houseboat "T-5" had a value that does not exceed \$275,000; and

Continental Casualty, Inc., as the insurer for the Plaintiff, having filed an Interim Stipulation for Value and Costs and having submitted to the jurisdiction of the Court and having

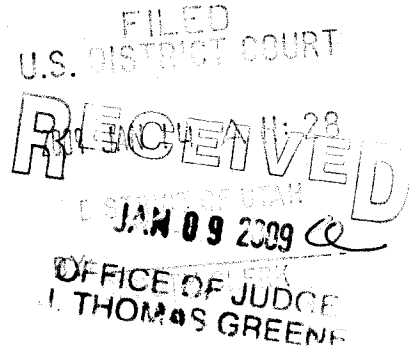
agreed to abide by all orders of the Court and to pay the amount awarded by the final decree rendered by the Court with interest and costs not exceeding the total sum of \$275,000 and \$1,000 for costs.

NOW, on motion of Gordon & Rees, LLP, acting as attorneys for the Plaintiff, it is hereby ORDERED that pursuant to Supplement Rule F(1) of Federal Rules of Civil Procedure, the Interim Stipulation for Value and Costs in the amount of \$276,000 as security for the claims and for costs of one thousand dollars (\$1,000) is approved.

DATED: January 14, 2009

  
UNITED STATES DISTRICT JUDGE

HAL J. POS (Bar No. 4500)  
PARSONS BEHLE & LATIMER  
201 South Main Street, Suite 1800  
Salt Lake City, UT 84145-0898  
Telephone: (801) 532-1234  
Facsimile: (801) 536-6111



Attorneys for Defendants Questar Defendants


**IN THE UNITED STATES DISTRICT COURT  
DISTRICT OF UTAH, CENTRAL DIVISION**

Utah State Department of Health,  
Plaintiff,  
vs.  
Peter NG, et al.,  
Defendants.

Civil No. 2:86-CV-00023

**ORDER GRANTING MOTION TO  
CONTINUE HEARING ON STATUS  
REPORT AND SCHEDULING  
CONFERENCE**

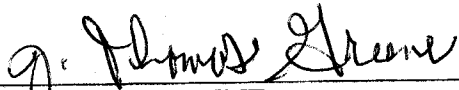
United States of America  
Plaintiff,  
vs.  
Entrada Industries, Inc., Mountain Fuel  
Supply Company, Inc. and Questar  
Corporation,  
Defendants.

  
Judge J. Thomas Greene

The matter of the motion to continue the hearing on the Status Report and Scheduling Conference, filed jointly by the remaining parties in this matter, having come before this Court, and good cause appearing,

IT IS HEREBY ORDERED that the Status Report and Scheduling Conference Hearing shall be continued from the present setting and rescheduled to the 4th day of February, 2009 at 1:30 p.m.

DATED this 13<sup>th</sup> day of January, 2009.

  
\_\_\_\_\_  
J. THOMAS GREENE  
United States District Judge